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\$\$08-101-6 to 9	(Reserved)

\$08-101-1 Title.

The rules in this chapter shall be known as the "Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui," herein referred to as "Rules of the Commission."

\$08-101-2 Authority.

The rules contained in this chapter are hereby established pursuant to section 281-17, HRS, as amended.

\$08-101-3 Purpose.

The purpose of the rules of the commission is to carry out the mandates of chapter 281, HRS, for the efficient administration of the manufacture and sale of

liquor and to prescribe the proper conduct of business of liquor licenses in the County of Maui.

§08-101-4 Construction.

The rules of the commission shall be construed to secure a reasonable balance between the protection of the public health, safety, and welfare, and the prudent exercise of liquor licensees' privilege to sell and manufacture liquor in the County of Maui, and to be no less restrictive than chapter 281, HRS, or other applicable statutes.

§08-101-5 Definitions.

Words defined in section 281-1, HRS, shall have the same meaning wherever used herein. Words in the masculine gender signify both the masculine and feminine gender, and those in singular or plural number signify both the singular and plural number. Whenever used herein, unless otherwise apparent from the context, the following definitions shall apply:

"Application" means the application or the required forms used in making the request and any information contained therein for liquor license, renewal, or transfer thereof, a permit or the amendment of restrictions or conditions placed on a license or for any other request or petition and shall include and not be limited to any affidavit or document filed by the applicant in connection with such application, oral statements to the liquor commission, the required necessary documentation, and any other forms or documents which may be prescribed from time to time by the liquor commission.

"Applicant" means a person who has filed any application for a permit, management agreement, liquor license, or its like, for consideration by the department of liquor control or liquor commission.

"Addicted to the excessive use of intoxicating liquor" refers to one who has acquired the habit of using intoxicating liquor excessively to deprive oneself of

reasonable self-control, a common drunkard, or a habitual drunkard.

"Alcohol" means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but not denatured or other alcohol, which is considered nonpotable under the customs laws of the United States.

"Beer" means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley or other grain, malt, and hops in water.

"Board" means the liquor control adjudication board, County of Maui.

"Club" means any organization for objects of a social, patriotic, political or athletic nature, or the like, but not for pecuniary gain, having a regular membership to all of whom is charged monthly or quarterly dues, employing a full-time steward, and from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. "Club" also means the establishment so operated and the premises thereof; provided the word "club" shall not apply to any organization not in existence for at least one year prior to its application for a license.

"Commission" means the liquor commission, County of Maui.

"Concessionaire" means a person who is not a holder of a liquor license, and who acquires the right to the possession and use of a specific area within the licensed premises to operate a concession.

"Concession area" means the area the concession is operating in or proposed to be operated.

"County" means the County in respect of which each liquor commission has jurisdiction under chapter 281, HRS, provided that in the County of Kalawao liquor may be sold only by such persons and only under such conditions

as may be permitted or prescribed from time to time by the department of health.

"Department" means the department of liquor control, County of Maui.

"Director" means the director of the department of liquor control, County of Maui.

"Due care" means the degree of care that a reasonable person would exercise to avoid any violation of the law or harm reasonably foreseeable if such care is not taken.

"Elected executive head" means the mayor of each county or the mayor's duly appointed or elected successor.

"Employee" shall include the licensee and all other persons who perform any type of activity, whether compensated or not, in conjunction with the operation, maintenance, or management of the licensed premises, including but not limited to the dispensing, serving, or selling of liquor, directly or indirectly, or who shall assist in the dispensing, serving, or selling of liquor, or who shall manage or supervise, directly or indirectly, any person who shall dispense, serve, or sell liquor. Any person who performs, whether compensated or not, any act or function defined above, the person shall be considered "on duty."

"Gross sales" means the total receipts actually received from the sale of liquor for which the license has been issued without deduction on account of the cost of property sold or expenses of any kind.

"HRS" means the Hawaii Revised Statutes.

"Hotel" means a premises consisting of one or more buildings which contain at least forty separate rooms, units, or apartments, providing sleeping accommodations for adequate pay to transient or permanent guests, and a suitable and adequate kitchen and dining room, where meals are regularly prepared and served to hotel guests and other customers.

"Immoral conduct" means any act which is contrary to good morals; inconsistent with the rules of the liquor commission and principles of morality; inimical to public welfare according to the standards of a given community, as expressed in law or otherwise; morally evil; impure; obscene; unprincipled; vicious; or dissolute. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is wilful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community, and as an inconsiderate attitude toward good order and public welfare.

"Industry member" includes any person engaged in business, within and without the County of Maui, as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler including class 1, manufacturers' licensee, and class 3, wholesale dealers' licensee, of distilled spirits, wine or malt beverages, or as a bottler of distilled spirits; industry member does not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

"Investigator" means any investigator of the liquor commission in each case for the county wherein the liquor commission has jurisdiction.

"Lewd conduct" means any act which is obscene, lustful, indecent, lascivious, or lecherous. The term imports a lascivious intent. It signifies that form of immorality which has relation to moral impurity, or that which is carried on in a wanton manner. Given to unlawful indulgence of lust, eager for sexual indulgence. Open and public indecency.

"License" means any license granted by the liquor commission, County of Maui, under the rules of the liquor commission.

"Licensee" includes also all agents, servants, and employees of the holder of a license, issued by the liquor commission.

"Liquor" or "intoxicating liquor" includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine, and also includes, in addition to the foregoing, any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented or not, in whatever form and of whatever constituency, and by whatever name called, containing one-half of one percent or more alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

"Manufacturer" includes distillers, rectifiers, blenders, vintners, and brewers of alcoholic beverages.

"Minibar" means a specified area of a hotel guest room where a selection of liquors in their original package are kept for sale or consumption in the hotel guest room.

"Minor" means any person below the age of twenty-one years.

"Obscene" means word or conduct that is objectionable or offensive to a reasonable person applying accepted standards of decency or the contemporary standards of the community.

"Open for business" means whenever any type of service or consumption is performed within the licensed premises; or when the licensee solicits and receives an order for; have or keep or offer or expose for sale; deliver for value or in any other way, including purely gratuitously; peddle; keep with intent to sell; traffic in any liquor or merchandise; or when any person other than an on-duty employee of the licensee is within the premises.

"Original package" means a package or container as it existed at the time of its delivery by the manufacturer or the wholesale dealer for convenience in transportation and sale.

"Partner" means a partner in any co-partnership, general partnership, limited partnership, foreign general partnership, limited liability partnership, foreign

limited liability partnership, or any other partnership that is in good standing and can legally operate within the State of Hawaii.

"Partnership" means any co-partnership, general partnership, limited partnership, foreign general partnership, limited liability partnership, foreign limited liability partnership, or any other partnership that is in good standing and can legally do business in the State of Hawaii.

"Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, limited liability partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity and includes any entity or person in a subdivision thereof, natural persons, any agent, partner, manager, member, organizer, officer, director, fiduciary, servant, and employee of such person.

"Premises" or "licensed premises" means the building and property that houses the establishment for which a license has been or is proposed to be issued; provided that in the case of a class 12, hotel license, "premises" includes the hotel premises; and provided further that if an establishment is in a retail shopping complex the businesses of which have formed a merchants association, "premises" means the establishment. As used in this definition, "establishment" means a single physical location where the selling of liquor takes place.

"Product" includes distilled spirits, wine, or malt beverages as defined in the Federal Alcohol Administration Act.

"Public place" means any publicly owned property or privately owned property open for public use or to which the public is invited for entertainment or business purposes.

"Restaurant" means a place which is regularly, and in a bona fide manner, used and kept open for the serving of meals to patrons for compensation, and which has suitable kitchen facilities connected therewith,

containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenue must derive from the sale of foods.

"Retail licensee" means any licensee holding a class 2 or class 4 through 14 license.

"Retailer" includes the holder of a license issued by the liquor commission and all its agents, servants, and employees, engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales pursuant to section 08-101-22(d)(1)(2) of the rules of the liquor commission, representing less than five per cent of the wholesaler's total sales volume for the preceding two month period shall not be considered a retailer with respect to such incidental sales.

"Rotate" means the inspection of and replacement of outdated liquor product with the same brand label liquor product in the existing liquor display area for that specific liquor product.

"School" means public or private elementary, intermediate, or high school.

"Sell" or "to sell" includes to solicit and receive an order for; to have or keep or offer or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; to traffic in; and the word "sale" includes every act of selling as herein defined. Notwithstanding the provisions, the delivery of liquor by a licensee's vehicle or the vehicle of a licensee's agent shall be deemed delivery for value.

"Seller" includes the agents and employees of a seller, provided that any person shall be deemed to be a seller, who in the State, whether acting as agent or representative of a nonresident principal or otherwise, solicits the placing of, or takes, receives, or forwards orders for liquor to be shipped into the State from any

place without the State to be delivered to customers, by direct shipment or otherwise.

"Standard bar" means any establishment licensed to sell liquor for consumption on the premises, except:

(a) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to the rules of the liquor commission; or

(b) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be provided by the rules of the liquor commission; or

(c) Premises in which employees or entertainers consume nonalcoholic beverages while in the company of patrons or sit with patrons pursuant to the rules of the liquor commission.

"State" means the State of Hawaii, unless otherwise indicated.

"Stock" means the inspection of and replacement of a liquor product with the same brand label liquor product in the existing liquor display area and/or approved liquor storage area for that specific liquor product.

"Striptease" means a burlesque act in which a performer removes his or her clothing piece by piece.

"Under the influence of drugs" means that the person concerned has consumed any legal or illegal drug sufficient to impair at the particular time under inquiry the person's normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

"Under the influence of liquor" means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person's normal mental faculties or ability to care

for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

"Wholesaler" includes wholesale and/or distributors of distilled spirits, wine, or malt beverages.

"Wine" means any wine coming within the definition of wine contained in the United States Revenue Act of 1918 (Act of February 24, 1919), and includes sake.

"Written" or "writing" includes printing and typewriting.

§§08-101-6 to 9 (Reserved)

SUBCHAPTER 2

LIQUOR COMMISSION, LIQUOR CONTROL ADJUDICATION BOARD, COUNSEL

\$08-101-10	Liquor commission; authority
\$08-101-11	Liquor control adjudication board
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\$08-101-19	(Reserved)

\$08-101-10 Liquor commission; authority.

(a) The commission is established in accordance with the provisions of chapter 281, HRS, and chapter 13 of the Charter of the County. The commission shall have the sole jurisdiction, power, authority, and discretion, subject to the rules of the commission and chapter 281, HRS:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures or sells any liquor without being authorized pursuant to the rules of the commission;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education, provided that any educational program shall be limited to department personnel, licensees, and their employees and shall be financed

through the money collected from the assessment of fines against licensees;

- (4) From time to time to make, amend, and repeal such rules, not inconsistent with chapter 281, HRS, as in the judgment of the commission seem appropriate for carrying out the provisions of chapter 281, HRS, and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission, which rules, when adopted as provided in chapter 91, HRS, shall have the force and effect of law;
- (5) Subject to chapters 76 and 77, HRS, to appoint and remove a director, who may also be appointed an investigator, and who shall be responsible for the operations and activities of the staff. The director may hire and remove hearings officers, investigators, and clerical, or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator within the scope of the investigator's duties shall have the powers of a police officer. No employee of any commission, aside from exercising the right to vote, shall support, advocate, or aid in the election or defeat of any candidate for public office and upon satisfactory proof of such prohibited activity the offender shall be summarily dismissed;
- (6) To limit the number of licenses of any class or kind within the County or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;

- (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
- (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the County as to each class respectively;
- (9) To prescribe all forms to be used for the purposes of the rules of the commission not otherwise provided for in the rules of the commission, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (10) To investigate violations of the rules of the commission, State liquor laws, State liquor tax laws, and, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, and to report such violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee;
- (11) To prescribe by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of liquor licenses;
- (12) To prescribe by rule, the term of any license or solicitor's and representative's permit authorized by the rules of the commission, the annual or prorated amount and the manner of payment of fees for such licenses and permits, and the amount of filing fees;

(13) To prescribe by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

(b) Subject only to the rules of the commission and chapter 281, HRS, the commission and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining the witnesses as are possessed by a circuit court, except that the commission and each member thereof shall not be bound by the strict legal rules of evidence. In addition, the commission shall have the power to require the production of, and to examine any books, papers, and records of any licensee which may pertain to the licensee's business under the license or which may pertain to a matter at a hearing before the commission or to an investigation by the commission.

(c) Any investigator, police officer, or other law enforcement officer may serve any subpoena issued by the commission.

(d) The exercise by the commission of the power, authority, and discretion vested in it, pursuant to the rules of the commission and chapter 281, HRS, shall be final and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in the rules of the commission or chapter 91, HRS.

§08-101-11 Liquor control adjudication board.

(a) The board shall consist of nine members appointed by the mayor with the approval of the council. The board shall hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or the rules of the commission and impose penalties for violations thereof as may be provided by law.

(b) The board is established in accordance with section 8-13.3 of the Charter of the County.

§08-101-12 Emergency rules.

In the event of national, State, or local emergency, the commission or the director may adopt emergency rules, with the approval of the mayor, for the health, safety, or welfare of the public or, the protection of life and property. All emergency rules shall be scheduled for public hearing at the earliest possible date and shall be in effect for the emergency period only.

§08-101-13 Liquor commission attorney.

The commission may hire attorneys to assist it in carrying out its administrative functions. The assistance may include providing legal advice, and prosecuting and defending legal claims or actions under or arising in connection with chapter 281, HRS, and the rules of the commission.

§08-101-14 Counsel for investigators, employees.

Whenever any investigator or other employee of the commission shall be questioned or prosecuted for any crime or sued in any civil cause for acts done in the performance of the investigator's or employee's duty as such investigator or employee, the investigator or employee shall be represented and defended, (1) in any such criminal proceeding by an attorney to be employed and paid by the commission, and (2) in any such civil cause by the department of the corporation counsel of the County, by an outside attorney to be employed and paid for by the commission.

§08-101-15 Determination of whether acts were in scope of duty.

The determination of whether the acts of an investigator or other employee of the commission, when the investigator or other employee is being questioned, prosecuted, or sued, were done in the performance of the investigator's or other employee's duty, so as to entitle the investigator or other employee to be represented by the corporation counsel, or by an attorney employed and paid by the commission, shall be made by the commission after consultation with the corporation counsel who may

make a recommendation to the commission in respect thereof if the corporation counsel so desires, and such determination shall be conclusive for such purpose only.

§08-101-16 Appeal of director's decision.

Any licensee or applicant aggrieved by any decision of the director may appeal such decision to the commission within thirty days after such decision is rendered by filing therewith reasons supporting such appeal. The commission shall, within a reasonable time, set a date and time for hearing such appeal and shall serve a notice thereof to the licensee at least two calendar days before the date of hearing. Notice of the commission's decision shall be given to the licensee as soon as possible upon the conclusion of such hearing.

§08-101-17 Issuance of director's written warning and caution.

(a) Except as provided in subsections (b) and (c) of this section, the director may issue a director's written warning and caution to any licensee the director reasonably finds may have violated any rule of the commission or any State liquor laws.

(b) The director shall not issue a written warning and caution to any licensee who has allegedly violated:

- (1) Section 281-78(b)(1)(A), HRS;
- (2) Section 281-78(b)(1)(B), HRS;
- (3) Section 08-101-60(b)(1)(A) of the rules of the commission; or
- (4) Section 08-101-60(b)(1)(B) of the rules of the commission.

(c) The director shall not issue a written warning and caution to any licensee who has received two written warnings and cautions for the violation of the same rule of the commission or State liquor law within the last two years.

(d) This subsection does not prohibit the department to present the director's written warning and caution at any commission or board proceeding as evidence to establish the licensee's knowledge of the violation of the rules of the commission, or State law, factor(s) to be considered in imposing penalties, or as part of the report by the investigator.

§08-101-18 Appeal of director's written warning and caution.

(a) A licensee may appeal a director's written warning and caution to the board, within thirty calendar days of receiving the written warning and caution.

(b) Upon an appeal of a director's written warning and caution, the director shall issue to the licensee a complaint and accusation.

(c) If the board finds that the licensee has violated the allegations contained in the complaint and accusation, the board may impose penalties in accordance with the rules of the commission, the Hawaii Revised Statutes, and section 8-13.3 of the Charter of the County.

(d) Any decision and order by the board may be used against the licensee in future board and commission proceedings.

§08-101-19 (Reserved)

SUBCHAPTER 3

TYPES OF LICENSES, HOURS, RESTRICTIONS

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\$08-101-20 Manufacture or sale without license.

If any person, acting in person or by or through any agent, servant, or employee, manufactures or sells any liquor, either directly or indirectly, or upon any pretense or by any subterfuge, except as authorized pursuant to chapter 281, HRS, and the rules of the commission, the person shall be fined not more than \$2,000.

\$08-101-21 Licensee purchases from manufacturers and wholesalers only.

(a) It shall be unlawful for any licensee, except a class 1, 3 or 10 licensee, to purchase, acquire, possess, serve or sell any liquor from any person other than a class 1, manufacturers' licensee, or a class 3, wholesale dealers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or wholesale dealer, pursuant to this rule, except as otherwise provided in this rule.

(b) It shall be unlawful for any licensee to obtain any liquor from a class 1, manufacturers' licensee, or a class 3, wholesale dealers' licensee, or a person

authorized by the commission as a solicitor or representative of a manufacturer or wholesale dealer except for use under the terms of their license.

§08-101-22 Licenses, classes.

(a) Licenses may be granted by the commission as provided in this rule.

(b) Class 1. Manufacturers' licenses.

(1) A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell the same at wholesale in original packages to any person who holds a license to resell the same and to sell 15.5 gallons or 7.5 gallons of draught keg beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption.

(2) Under this license no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) Beer;

(B) Wine;

(C) Alcohol; and

(D) Other specified liquor.

(4) It shall be unlawful for any holder of a manufacturer's license, from within or without the County, to have any interest whatsoever in the license or licensed premises of any other licensee, except as may be provided within section 08-101-106 of the rules of the commission.

- (c) Class 2. Restaurant licenses.
 - (1) A license under this class shall authorize the licensee to sell liquors specified therein for consumption on the premises, and may provide off premises catering including the sale of liquor by applying and obtaining approval for a class 13, caterer's license.
 - (2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar; or
 - (B) A premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
 - (i) A premises in which recorded background music is provided;
 - (ii) A premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
 - (3) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
 - (4) For each category of class 2 licenses there shall be the following kinds:
 - (A) General (includes all liquors except alcohol);

(B) Beer and wine; and

(C) Beer.

- (5) Any licensee holding and operating a different class but the same kind and category of license at least one year immediately prior to the date of the filing of an application, and who would otherwise come within this class, kind, and category of license shall not be required to apply for a new license.
- (6) Restaurant license may be granted to a place, which regularly, and in a bona fide manner, is used and kept open for the serving of meals to patrons for compensation, and which has suitable approved kitchen facilities within, containing the necessary equipment and supplies for cooking an assortment of foods, which may be required for ordinary meals. Additionally, the premises must have been continuously operated for one year prior to any application, and the applicant must provide a financial report of gross revenue of that year of which at least thirty per cent of the establishment's gross revenue must be derived from the sale of foods.
- (d) Class 3. Wholesale dealers' licenses.
 - (1) A license for the sale of liquors at wholesale shall authorize the licensee to import and sell only to licensees, or to others who are by law authorized to resell, but are not by law required to hold a license, the liquors therein specified in quantities not less than five gallons at one time if sold from or in bulk containers or not less than one gallon if bottled goods; provided that samples of liquor may be sold back to the manufacturer.
 - (2) A wholesale dealers' license may authorize the licensee to sell draught beer in quantities not less than five gallons at one time to any person for private use and consumption if the

licensee files an affidavit with the commission stating that there is no class 4, retail dealers' licensee in the County to sell the wholesalers' brand of draught beer.

- (3) Under the license no liquor shall be consumed on the premises except as authorized by the commission.
- (4) Of this class there shall be the following kinds:
 - (A) General (includes all liquors except alcohol);
 - (B) Beer and wine; and
 - (C) Alcohol.
- (5) If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer has the dealer's license. Nothing in this subsection shall prevent a wholesaler from selling liquors to post exchanges, ships service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise as a common carrier, under chapter 269, HRS, engaged in flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

- (e) Class 4. Retail dealers' licenses.
 - (1) A license to sell liquors at retail or to class 10 licenses, shall authorize the licensee to sell the liquors therein specified in their original packages.
 - (2) Under the license no liquor shall be consumed on the premises except as authorized by the commission.
 - (3) Of this class, there shall be the following kinds:
 - (A) General (includes all liquors except alcohol);
 - (B) Beer and wine; and
 - (C) Alcohol.
- (f) Class 5. Dispensers' licenses.
 - (1) A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises.
 - (2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar;
 - (B) A premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to the rules of the commission;
 - (C) A premises in which live entertainment or recorded music is provided. The subcategories of this category shall be:
 - (i) A premises in which recorded background music is provided;

- (ii) A premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission; or
- (D) A premises in which employees or entertainers are compensated to sit with patrons, whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons, pursuant to the rules of the commission. The subcategories of this category shall be:
 - (i) Employees, entertainers, or any other persons therein shall be twenty-one years of age or older.
 - (ii) There shall be no more than twelve category D, class 5, dispenser licenses in the County.
- (3) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (4) For each category of class 5 licenses there shall be the following kinds:
 - (A) General (includes all liquors except alcohol);
 - (B) Beer and wine; and
 - (C) Beer.
- (5) Any licensee holding a different class of license and who would otherwise come within this class with the same or downgrade of kind or category of license, or both, shall not be required to apply for a new license.

(g) Class 6. Club licenses.

- (1) A club license shall be general only (but excluding alcohol) and shall authorize the licensee to sell liquors to members of the club, and to guests of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club; except that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor, if owned by the member, for the member's own personal use and not to be sold, and that may be consumed only on the premises.
- (2) Club licensees shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises.
- (3) Any person enjoying the guest privileges of a club and to whom liquor may be sold must be a bona fide guest of a member of the club, and the member must be present at all times within the premises with his or her guest(s).
- (4) Clubs shall keep records as to registration of guests for at least one year, which records shall be produced whenever required by the director.
- (5) Licensee shall have readily available at all times a guest book on the licensed premises and shall be responsible for its member signing in his or her guest(s) at the time his or her guest(s) enter the licensed premises.

(h) Class 7. Vessel licenses.

- (1) A general license may be granted to the owner of any vessel performing a regular water transportation passenger service between any two or more ports in the State for the sale of

liquor (other than alcohol) on board the vessel while in the waters of the State; provided the sales are made only while the vessel is en route, and only for consumption by passengers on board.

- (2) If the vessel has a home port in the State the license shall be issuable in the County in which the home port is situated. If the licensee's home port is not situated in this State, the license shall be issuable in the city and county of Honolulu.
- (3) If on any vessel for which no license has been obtained under this rule, any liquor sold or served within three miles off the shore of any island of the County, the same shall constitute a violation of the rules of the commission.
- (i) Class 8. Transient vessel licenses.
 - (1) A general license may be granted to the owner of any vessel that does not fall within class 7 for the sale of liquor (other than alcohol) on board the vessel while in any port of the State.
 - (2) Sales shall be made only for consumption by passengers and their guests on board the vessel.
 - (3) The license shall be issuable in each county where the sales are to be made.
 - (4) The application for the license may be made by any agent representing the owner.
- (j) Class 9. Tour or cruise vessel licenses.
 - (1) A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided that sales be made only for

consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the commission.

- (2) If the vessel has a home port in the State, the license shall be issuable in the county wherein the home port is situated.
 - (3) If the licensee's home port is not situated in this State, the license shall be issuable in the city and county of Honolulu.
 - (4) If on any vessel for which no license has been obtained under the rules of the commission, any liquor is sold or served within three miles off the shore of any island of the County, the same shall constitute a violation of the rules of the commission.
- (k) Class 10. Special licenses.
- (1) A special license may be granted by the director of the department for the sale of liquor for a period not to exceed three days on any occasion as may later be approved by the commission.
 - (2) Special licenses shall be issued only to charitable or educational nonprofit organizations, to political parties and to candidates seeking public office. Nonprofit charitable or educational organizations shall be required to attach their U.S. Internal Revenue's section 501(c)(3) exemption letter and political candidates shall be required to attach a copy of their organizational report filed with the state campaign spending commission, to their application.
 - (3) A one-day special license shall be issued as follows:
 - (A) The commission shall waive the fees, notarizing of documents, submission of

floor plans, and other documents for one-day special licenses for fundraising events by nonprofit organizations as provided under section 281-32.3, HRS. Applicants for one-day special licenses shall not be assessed fees for their first four days applied for in a fiscal year, provided fees in accordance with section 08-101-50(b)(10) of the rules of the commission shall be assessed for any further applications.

- (B) A request shall be made in writing and signed by the applicant, and shall state the date, time, and place of the event and the persons responsible for compliance with the liquor laws of the State and the rules of the commission.
 - (C) Any registered educational or charitable nonprofit organization may obtain a one-day special license to sell liquors in their original packages for off-premises consumption for its fundraising event.
- (4) Of this class, there shall be the following kinds:
- (A) General (includes all liquors except alcohol);
 - (B) Beer and wine; and
 - (C) Beer.
- (5) Under this license, the liquors therein specified shall be consumed on the premises, except as may be provided in subparagraph 3(C) of this subsection.
- (1) Class 11. Cabaret licenses.
- (1) A cabaret license shall be general only (but excluding alcohol) and shall authorize the

sale of liquors for consumption on the premises.

- (2) This license shall be issued only for premises where:
 - (A) Food is served;
 - (B) Facilities for dancing by the patrons are provided, including a dance floor of not less than one hundred square feet; and
 - (C) Live entertainment other than by a person who performs or entertains unclothed, is visible and audible to all patrons.
- (3) Professional entertainment by persons who perform or entertain unclothed shall only be authorized by:
 - (A) A cabaret license for a premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990;
 - (B) A cabaret license that, pursuant to rules adopted by the commission, permits professional entertainment by persons who perform or entertain unclothed.
- (4) A cabaret license under subparagraphs (3)(A) or (3)(B) of this subsection authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000.
- (5) A cabaret license under subparagraphs (3)(A) or (3)(B) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except when the transferee obtains approval from the commission, and pursuant to rules adopted by the commission.

- (6) Notwithstanding any rule of the commission to the contrary, cabarets in resort areas may be open for the transaction of business until 4:00 a.m. throughout the entire week.
- (7) Any cabaret premises not located within a county zoned resort district shall operate only during the hours prescribed for dispenser premises.
- (8) All bars in cabaret premises, in order to operate during hours prescribed for cabarets must confine liquor service to patrons within an area where live entertainment is visible and audible to all patrons. Bars in cabaret premises which do not comply with the foregoing requirements shall operate only during the hours prescribed for dispenser premises.
- (m) Class 12. Hotel licenses.
 - (1) A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises, to sell all liquors, except alcohol, for consumption on the premises, and may provide off-premises catering by applying and obtaining approval for a class 13, caterer's license.
 - (A) A hotel licensee may be granted a catering permit while performing food catering functions.
 - (B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be

subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.

- (C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.
- (2) Procedures such as room service, self-service (no host), minibars, or the like in guest rooms, and service at private parties in areas that are the property of, and contiguous to the hotel, are permitted subject to liquor laws, rules of the commission, and the following conditions:
- (A) Except as provided in paragraph (3) of this subsection, hotel licensees are prohibited from selling liquor as authorized by retail dealers' licenses.
 - (B) Room service:
 - (i) Liquor may be sold by the individual drink, or in its original manufacturer-sealed container for consumption within a registered guest's room;
 - (ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the guest's room service menu at all times within the interior of each guest room;
 - (iii) The sale and service of liquor shall be made by an employee approved by the director.

- (3) A license to sell liquor within a hotel shall, upon written approval of the commission, authorize the sale of liquor of any kind or brand to hotel guests for consumption within their respective hotel rooms, subject to the following conditions:
 - (A) Minibars or honor bars:
 - (i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests;
 - (ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor;
 - (iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters.
 - (iv) At no time or under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.
 - (B) At no time or under any circumstances shall a licensee permit liquor to be furnished:
 - (i) To any person under twenty-one years of age;

- (ii) To any person, who at the time, is under the influence of liquor;
 - (iii) To any person when there is reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.
- (C) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.
- (4) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the hotel of legal drinking age and consumption of liquor shall be restricted to the hotel guest room.
- (5) Unless authorized by law, hotel licensees shall not sell liquor in the manner authorized by the retail dealer's licenses.
- (n) Class 13. Caterer licenses.
- (1) A general license may be granted to any class 2, restaurant licensee, or any class 12, hotel licensee, who is authorized to sell liquor for on-premises consumption who has on file with the department an approved one year financial report showing thirty per cent of the establishment's gross revenue is derived from the sale of food that is prepared and cooked within its department of health and department of fire control approved kitchen facilities and served for consumption by patrons within its premises, and who serves food as part of their operation for the sale of liquor (other

than alcohol) while performing food catering functions. At least thirty per cent of the gross revenues of the catered event shall be food sales.

- (2) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. Off-premises catering will only be authorized upon issuance by the department and the licensee receiving a class 13, caterer's license. The commission shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.
- (3) The commission shall not issue a caterer's license to any licensee whose original license does not authorize him to sell and serve alcoholic beverages for consumption on the premises.
- (4) The commission shall not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner of the property or anyone authorized use of the property. Catered functions for which the owner or the lessee or its like of the property is being compensated for the use of the property shall be limited to properly zoned property.
- (5) The application for a caterer license shall be submitted to the department at least seven working days prior to the catered function and shall include, but not be limited to, a floor plan showing the boundaries of the proposed catered licensed premises; the date, times, and location of the event; a lease, rental agreement or authorization which allow the applicant the use and exclusive control of the

property for the sale, service and consumption of liquor, and obtaining a statement from the licensee that all required governmental clearances were obtained for the catered function.

- (6) A caterer license may be granted by the director for the sale of liquor for a period not to exceed one day for any occasion or location, provided a class 12, hotel licensee, may be granted a caterer license by the director for sale of liquor for a period not to exceed three days for any occasion or location, whose catering function is directly related to its operation and the catered group consists of permanent or transient hotel guests that registered for and provided sleeping accommodations at the licensed premises.
- (7) Catered functions for which patrons are being assessed a fee is prohibited. The privilege of catering is to permit legitimate catered functions and is not intended to be utilized to circumvent the liquor laws by allowing a licensee to operate its liquor license outside of its licensed premises. Any use of property for catered events by a licensee which appears to be an extension of the licensee's premises, place the health, safety and welfare of the public at risk, or appears to be excessive where a liquor license for class 2, class 5 or a similar class which allows consumption at its premises should be obtained, applications for use of said premises may be denied by the director.
- (8) A licensee who is authorized to provide catering shall report the gross sales of liquor and pay the applicable fees pursuant to section 08-101-50 of the rules of the commission.

- (o) Class 14. Brewpub licenses.
 - (1) A brewpub licensee:
 - (A) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee's premises during the license year;
 - (B) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
 - (C) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealers' licensees, pursuant to obtaining all necessary clearances from all other governmental agencies and conditions imposed by the department of planning and department of public works and waste management;
 - (D) May sell intoxicating liquor, purchased from class 1, manufacturers' licensee, or class 3, wholesale dealers' licensee, to consumers for consumption on the licensee's premises; provided that the premises is owned and operated by the licensee.
 - (2) The categories of establishments shall be as follows:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
 - (i) A premises in which recorded background music is provided;

- (ii) A premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.

(p) It shall be unlawful for any licensee to utilize any liquor, acquired or purchased from a class 1, manufacturers' licensee, or a class 3, wholesale dealers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or for personal or private use or consumption, except as authorized by the commission. All liquor shall be sold as authorized by the license issued.

§08-101-23 Special conditions.

(a) Any dancing or entertainment provided shall be in areas designated and approved by the director.

(b) An approved area for dancing shall have, when utilized, a minimum area of one hundred square feet, be a non-consumption area, and shall be clearly designated for dancing.

(c) No obscene public or exhibition dancing either with or without partners, or obscene language, songs, or entertainment shall be permitted.

(d) Entertainers shall not expose to view any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals, or any portion of the female breast below the top of the areola.

(e) Any entertainment such as burlesque or strip tease shall be conducted upon a stage or platform which is at least twenty-four inches above the level of the floor and removed at least six feet from the nearest patron and shall be limited to class 5, category B, dispenser licensees, and to class 12, hotel licensees.

(f) No licensee shall permit any person to perform acts of or acts which simulates:

- (1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or flagellation.
 - (2) The touching, caressing or fondling of the breast, buttocks, anus or genitals.
 - (3) The displaying of any portion of the pubic hair, cleft of the buttocks, anus, vulva, genitals, or any portion of the female breast below the top of the areola.
- (g) No licensee shall permit showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:
- (1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or flagellation.
 - (2) Scenes wherein a person displays any portion of the vulva, anus, genitals, cleft of the buttocks, or any portion of the female breast below the top of the areola or any of the prohibited activities within this section.
 - (3) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities within this section.
- (h) No licensee shall encourage or permit any person on the licensed premises to touch, caress or fondle the breast, buttocks, anus or genitalia of any other person, whether directly or through the clothing or any other material.
- (i) No licensee shall encourage or permit any person on the licensed premises to wear or use any device or covering, exposed to view, which simulates the breast, genitalia, anus, pubic hair or any portion thereof.
- (j) All music, dancing, and entertainment shall cease not later than the hours during which a licensed premises may be open for the transaction for the sale, service and consumption of liquor.

(k) No licensee shall permit any female impersonator to perform acts of or acts wherein such person displays any portion of the breast below the top of the areola.

(l) No licensee shall permit any person from displaying any portion of any artificial pubic hair, cleft of the buttocks, anus, vulva, genitals, or any portion of the female breast below the top of the areola.

§08-101-24 Temporary licenses.

A temporary license of any class and kind may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class, kind, and category issued by the commission at least one year immediately prior to the date of filing of the application for temporary license; or to any premises that have been operated under a license of the same class, kind, and category issued by the commission at least one year prior to the license being revoked or canceled, provided that the license application must be filed within ninety days of the surrender of the previous license or the closing of business.
- (2) The license of the same class and kind then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct;
- (3) The applicant for temporary license shall have filed with the commission an application for a license of the same class and kind then in effect for the premises;
- (4) The application for temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall be refunded in full;

- (5) A temporary license shall be for a period of not in excess of one hundred twenty days. The license may be renewed at the discretion of the commission for not more than one additional sixty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this rule;
- (6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency or certified check for the liquor before or at the time of delivery of the liquor to him;
- (7) A temporary license shall contain the same restrictions and/or conditions as placed on the previous license;
- (8) A temporary license shall terminate upon the issuance of the transferred or new license, denial or withdrawal of the transfer or new application, or at midnight on the one hundred twentieth day on the first temporary license or midnight on the sixtieth day on the second temporary license after being effected or issued.

§08-101-25 Hours for the sale, service, and consumption of liquor in licensed premises.

(a) Hours during which licensed premises may be open for the transaction of business shall be as follows:

- (1) Dispensers, restaurants, clubs, vessels, transient vessels, tour or cruise vessels, and specials: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day.
- (2) Cabarets: any hour of the day from 8:00 a.m. to 4:00 a.m., the following day.
- (3) Hotels: any hour of the day from 6:00 a.m. to 4:00 a.m., the following day.

- (4) Retailers: any hour of the day from 6:00 a.m. to 11:00 p.m.
- (5) Manufacturers and wholesalers: any hour of the day from 6:00 a.m. to 9:00 p.m.
- (6) Brewpub: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day.

(b) Adjustment of hours on emergencies: the commission may, by resolution, extend or curtail hours for the transaction of liquor business on any legal holiday or any other occasion when such action is deemed advisable. The commission shall further have the authority to order the closing of licensed premises in a riot area for the protection of life and property for the hours and days it deems necessary.

(c) There shall be no sale, service, or consumption of liquor on or within any licensed premises before or after the hours prescribed by the commission.

(d) There shall be no sale or consumption of liquor on board any vessel licensed premises except while en route unless otherwise authorized by law.

(e) Licensee may operate or be open for business for other than the sale, service, or consumption of liquor prior to or beyond the hours prescribed by the commission, upon submitting an application and obtaining prior approval from the commission.

§08-101-26 Restrictions or conditions on licenses.

(a) The commission may, at any time, revoke, suspend, or place conditions, or restrictions on any license issued under the rules of the commission for the purpose of preventing activities within the licensed premises or adjacent related area, such as stages, entertainment areas, lanais, and parking areas, which are potentially injurious to the health, safety, and welfare of the public.

(b) These restrictions or conditions may be placed upon the license at the time the license is initially issued or at any other time upon petition of the director and proper notice to the licensee.

(c) No restrictions or conditions shall be placed on any license under this section without a hearing before the commission.

(d) Licensee shall comply with any restrictions or conditions placed on the license by the commission.

§08-101-27 Permits.

(a) Permits are required, but not limited to the following:

- (1) Outside warehousing and storage areas;
- (2) Individual permit for importation of liquor;
- (3) Trade shows;
- (4) Installation of any game device;
- (5) Reduction or increase of licensed premises;
- (6) Area(s) for music, entertainment, and dancing;
- (7) Fashion shows or beauty pageants;
- (8) Catering;
- (9) Product tasting;
- (10) Modification to licensed premises other than what was submitted to and approved by the commission at the time of application.

(b) Permit conditions. The director shall establish conditions for the use of permits, copies of which shall be available in the department.

(c) Licensee shall comply with all conditions placed on any permit issued by the department or the

commission. Any permit issued shall be subject to immediate modification, suspension, or revocation upon the issuance of a written notification and without hearing, should the licensee violate any permit condition.

(d) The director shall grant or deny any permit application within sixty calendar days upon the applicant filing a complete application with all required documents, governmental clearances, and fees for a permit and the acceptance of the application by the director, or the application shall be deemed approved. The maximum period of time of sixty calendar days established for the approval or denial of the permit application shall be extended in the event of a national disaster, State emergency, or union strike, which would prevent the applicant, the department, or the director from fulfilling the application or review requirements, or may be extended at the request of the applicant with the approval of the director.

§08-101-28 Special conditions for class 4, retail dealers' licenses.

(a) Every retail licensee shall display and expose for view, within the liquor sales area of the licensed premises, a price for each size of each brand of liquor sold.

(b) If a retail dealer's licensed premises is open to the public during hours when the sale of liquor is not permitted, the licensee shall post conspicuous signs in the area or areas where liquor sales are usually made, giving notice to customers that the sale of liquor is prohibited during that time.

(c) Customers making purchases at retail premises must enter the licensed premises to purchase liquor. The drive-in method whereby the customer orders from a motor vehicle or the licensee delivers liquor to the vehicle, or both, is prohibited.

(d) This section shall not be construed to prohibit assistance to any person who is physically unable to walk, lift, or carry purchases of liquor due to a

disability, or allowing the delivery of liquor product to a primary residence by a class 4, retail dealers' licensee, provided:

- (1) An employee of the licensee, who is approved by the director pursuant to section 08-101-70 of the rules of the commission, makes the delivery of the liquor product directly to the purchaser;
- (2) That the employee ensures that the person receiving the delivery is twenty-one years of age or older, not under the influence of liquor; and
- (3) The licensee or employee is not in violation of any rules or State laws.

(e) It shall be unlawful for any holder of a retail dealers' license, or any person acting as an agent or representative for any holder of a retail dealers' license, directly or indirectly, or through any subsidiary or affiliate to solicit or obtain any financial assistance, or anything of value from any industry member.

§08-101-29 (Reserved)

SUBCHAPTER 4

LICENSING PROCEDURES

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\$08-101-30 Application.

(a) Applications for liquor licenses, renewals, transfers, management agreement, solicitor's permit, or change of partner(s) in a partnership, limited liability partnership, member, manager, organizer or any person of a limited liability company, or officer(s), director(s), and stockholder(s) owning or controlling twenty-five per cent or more of the outstanding stock or ownership of a corporation, thereof, and all notices of public hearing sent, and affidavits filed by applicants in connection with and part of such applications, shall be in the respective original forms and accompanied by the following necessary documentation and any other original

forms or documents which may be prescribed from time to time by the commission, which shall be considered as part of the application.

- (1) Department of health clearance;
- (2) State and Federal tax clearances;
- (3) Floor plans drawn to scale;
- (4) Tax map and list of all tax map key numbers, names and addresses of property owners, and lessees and owners of record of shares in a cooperative apartment situated within a radius of five hundred feet of the proposed premises;
- (5) Personal history statement;
- (6) Verification of any corporation, partnership, association, limited liability company, limited liability partnership, or any other entity;
- (7) Affidavit of mailing of notices of public hearing;
- (8) Transferor's gross sales report;
- (9) Transferor's endorsement of transfer;
- (10) Executed copy of agreement of sale, lease, rental agreement, which states that the premises and its operation must be under the licensee's exclusive control at all times;
- (11) Additional fee assessment agreement;
- (12) Coast guard documentation;
- (13) Zoning clearance;
- (14) Building permit;
- (15) Criminal history record check;

- (16) Stockholder's list;
- (17) Certificate of occupancy, miscellaneous inspection report, and clearance from the department of fire control (miscellaneous inspection report and clearance from the department of fire control shall indicate that all governmental regulations and administrative rules have been complied with);
- (18) Guaranty or bond;
- (19) Copy of a Federal or state governmental picture identification and social security card for each person.

(b) The department of health clearance, certificate of occupancy, and other clearances or executed copies of other documents, as approved by the commission, may be submitted after filing the application and hearing thereon, but must be filed before issuance of the license. State and Federal tax clearances shall be dated within sixty days of the acceptance of any application by the department.

(c) The applicant or an authorized representative as provided in section 08-101-31 of the rules of the commission shall appear in person before the commission on the date set for any hearing on his application or license, or both. Any application for a license or the transfer thereof may be denied unless the applicant or its authorized representative appears in person on the date set for the hearing thereupon. The commission may require a specific applicant, officer or director of the corporation, or partner of a partnership to appear in person.

(d) The commission may deny any application or cancel any hearing or revoke any action taken after discovering that any information contained within the application, any document submitted or affidavit is false.

(e) Once an application is before the commission, the applicant must obtain the commission's approval to withdraw the application.

(f) The director may reject, refuse to accept, or return any application or request that is incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or section of chapter 281, HRS.

(g) Licensee shall apply for and secure the commission's approval, in writing, prior to a change in ownership of any number of shares of the stock which results in a person thereof becoming the owner of twenty-five per cent or more of the outstanding capital stock. In addition, the partnership, limited liability partnership, limited liability company, corporate licensee, or any other person, or any person in a subdivision, or management agreement thereof, shall, on the proper application forms and the filing of all required documents, within thirty days from the date of admission, election, or withdrawal of any partner in a partnership or limited liability partnership, officer, or director of a corporation, or member, manager, organizer, or person of a limited liability company, or any other person, or any person within a subdivision, or management agreement thereof, notify the commission in writing of the change. If the commission finds any partner in the partnership, limited liability partnership, member, manager, organizer, or any other person of a limited liability company, or officer, director, or any person owning or controlling twenty-five per cent or more of the outstanding stock of the corporation, or any subdivision, or management agreement thereof, an unfit or improper person to hold a license in their own right pursuant to section 281-45, HRS, or the rules of the commission, it may revoke the license or suspend the license until a new transfer of such capital stock or ownership is effected to a fit or proper person pursuant to section 281-45, HRS, or the rules of the commission, or until the unfit or improper partner, officer, member, manager, organizer, director, or any person, or any person in a subdivision, or management agreement thereof, is removed or replaced by a fit and proper person pursuant to section 281-45, HRS, or the rules of the commission.

Application for the admission, election, or withdrawal of any officer, director, or a person owning or controlling twenty-five per cent or more of the corporate stock, member of a limited liability company, or partner in a partnership or limited liability partnership, or any person, or any person of a subdivision, or management agreement thereof, shall include, but not limited to, the application form, corporate minutes, secretary's certification of the minutes, or its like which shall include the listing of all the officers, directors, and any person owning or controlling twenty-five per cent or more of the corporate stock, members in a limited liability company, or partners of a partnership or limited liability partnership, or any person, or any subdivision or any person of a subdivision, or management agreement thereof, and all other requirements.

(h) All applications, forms, or documents, and any information submitted to the department, shall be true and accurate and shall not contain any false or misleading information. Applicant shall provide any documentation requested by the department to verify any information submitted on any application, form, or document.

(i) A change of location application is subject to all requirements and hearings as a new application for a license. The liquor license for the existing premises shall become void upon the issuance of the license for the new location. Licensee shall meet all requirements as a new license, pay the prorated license fee, and if applicable, file a gross sales report on all liquor sold under the original license and pay the assessment fee prior to the issuance of the license. All records of the original license shall be part of the licensee's change of location application and record.

(j) Whenever an applicant or licensee is a partner in any partnership, limited liability partnership, corporation, limited liability company, or any other person, and consist of any partnership, corporation, limited liability company, or any other person, each partner, officer, director, member, manager, agent, organizer, or any person, or any person of a subdivision,

or management agreement thereof, shall be subject to all requirements in holding a liquor license in their own right, pursuant to section 281-45, HRS, or the rules of the commission.

(k) The commission shall grant or deny any liquor license application within two hundred forty calendar days upon the applicant filing a complete application with all required documents, governmental clearances, and fees. The maximum period of time of two hundred forty calendar days established for the approval or denial of the liquor license application shall be extended in the event of a national disaster, State emergency, or union strike, which would prevent the applicant, the department, or the commission from fulfilling application or review requirements, or may be extended at the request of the applicant and with the approval of the commission.

(l) All applications and documents submitted to the department shall contain full legal name of the applicant, individual licensee, a general partner representing the partnership or limited liability partnership, officer or director of a corporation, trust, or association, member, manager, or organizer of a limited liability company, or the licensed attorney or agent authorized in writing to represent the applicant.

(m) Any application approval by the commission or director shall be subject to the applicant obtaining all necessary clearances from other governmental agencies prior to exercising its license and/or permit.

§08-101-31 No license issued, when.

No license shall be issued:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned (except that the commission may grant a license under the rules of the commission to a partnership, trust, association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member,

manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling twenty-five per cent or more of the outstanding stock are fit and proper persons to have a license), or to any other person not deemed by the commission to be a fit and proper person to have a license;

- (2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually;
- (3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a signed certificate from the director of taxation, and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the State or federal governments any delinquent taxes, penalties, or interest;
- (4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling twenty-five per cent or more of a limited liability company, or any officer, director or any person owning or controlling twenty-five per cent or more of the outstanding stock of any corporation, trust, or association, or any other person, who has had any liquor license revoked less than two years previous to the date of the

application for any like or other license under the rules of the commission; or

- (5) To any person owning or controlling twenty-five per cent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling twenty-five per cent or more of the outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;
- (6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;
- (7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling twenty-five per cent or more of the outstanding stock of

such corporation would be disqualified under that paragraph from obtaining the license individually.

§08-101-32 Transfer of license.

(a) The commission will not consider the transfer of any license unless it meets the provisions of section 281-41, HRS.

(b) No license shall be transferred unless the transferor's licensed premises was operated throughout the year prior to the application for transfer, except for good cause shown to the commission.

(c) No license issued shall be transferable or be transferred to other than the same class, kind, and category.

§08-101-33 Renewal of license.

(a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of a completed application, payment of the basic fee, submission of State and Federal tax clearances, and other required documents.

(b) If complaints from the public, reports from the commission's investigators, or adjudications of the commission or the board indicate that noise created by patrons departing from the premises disturbs residents on the street, or of the neighborhood in which the premises is located, or that noise from the premises, or adjacent related outdoor areas under the licensee's control, such as parking lots or lanais, exceed standards contained in State, County, or commission noise codes, and intrudes into nearby residential units, the commission may withhold the issuance of a renewed license until corrective measures meeting the commission's approval are taken.

(c) The commission, at the time of renewal or at any time, may revoke, suspend, or place conditions or restrictions on any license issued under the rules of the commission for the purpose of preventing activities

within the licensed premises or adjacent areas under the licensee's control that are potentially injurious to the health, safety, and welfare of the public including, but not limited to, criminal activity, including assault, drug dealing, drug use, or prostitution, upon petition of the administrator of the appropriate county agency, proper notice to the licensee, and a hearing before the commission pursuant to chapter 91, HRS.

(d) In no case shall any application for renewal of a liquor license be accepted for filing by the department prior to the 1st day of April or after 4:30 p.m. of the 15th day of June next preceding the date of expiration of the existing license. If the 15th of June falls on Saturday, Sunday, or legal County of Maui holiday, the last day for the application for renewal of a liquor license shall be 4:30 p.m. on the first County of Maui working day following.

(e) In no case shall any application for renewal of a liquor license be accepted unless it includes the completed application, basic fee payment, State and Federal tax clearances, and all other required documents.

(f) Subject to the provisions of the liquor laws of the State, the director may act on any application for the issuance, renewal, or the transfer of any license or permit for which public hearing is not required.

§08-101-34 Term of license.

(a) Every license whenever issued, unless sooner revoked or canceled (except transient vessel, special and temporary license), shall expire with the close of June 30, next succeeding its issuance.

(b) The expiration date of transient vessel, special, and temporary licenses shall be determined by the director and stated on the license at the time of their issuance.

(c) All licenses not exercised within one hundred eighty days of approval by the commission shall, except for good cause, become void. Commission approval for the extension to exercise the license must be granted prior

to the expiration of the one hundred eighty days, or of any extension.

(d) Should any licensee expire, cease to exist, or cannot legally operate, the license shall become void.

§08-101-35 Temporary or permanent closing of licensed premises.

(a) The holder of any license must immediately surrender his license to the department upon suspension or revocation thereof, or within five days after closing his business if it be otherwise permanently discontinued.

(b) No licensee shall temporarily close his licensed premises for five days or more, without first notifying the department in writing of his intention to do so, the approximate period that such premises shall be so closed and the reason, if any, for such action.

(c) If the use of the premises covered by any license becomes lost to the licensee by reasons of being sold under foreclosure proceeding, or a civil execution, or other legal process, or for any other cause, which shall force the loss of the exclusive control by the licensee or a cessation of the business of the license thereon under the license (other than by a revocation or suspension of the licensee's license), the commission shall cancel or suspend the license.

(d) Licensee may request to place its liquor license on inactive status which will cause the temporary cessation of the sale, service, and/or consumption of intoxicating liquors, provided:

- (1) The licensee shall submit a written request to the department, and upon approval, shall surrender its license to the department for safekeeping.
- (2) The licensee shall retain possession and exclusive control of the premises, at all times.

- (3) The licensee shall be subject to closing procedures, including the filing of the gross liquor sales, and payment of the percentage fee.
- (4) An inactive license may be renewed subject to section 08-101-33 of the rules of the commission.
- (5) The licensee shall notify the department of the re-activation of such license and shall be subject to final inspection and compliance with all governmental laws and administrative rules prior to the re-activation of the license.

§08-101-36 Unauthorized use of trade name; change.

(a) A new licensee or transferee shall have a choice of trade name, however, such trade name must be registered with the state department of commerce and consumer affairs.

(b) Any licensee desirous of changing an existing trade name shall submit to the commission a certificate of registration of trade name issued by the state department of commerce and consumer affairs, showing approval of such registration.

(c) Use of any trade name without prior approval of the commission is prohibited. Any publication or advertising or sign with an unauthorized trade name will be considered prima facie evidence of use of such trade name.

§08-101-37 Representation of licensee.

Except as otherwise provided by law, in any proceeding involving an application for issuance or transfer of a license, the applicant shall be represented at the commission hearing only by the individual applicant, a general partner representing the partnership or limited liability partnership, an officer or director of a corporation, trust, or association, a member,

manager, or organizer of a limited liability company, a licensed attorney, or an agent authorized in writing to represent the applicant.

§08-101-38 Authorized signature.

All applications and documents submitted to the department shall be signed by the individual licensee, a general partner representing the partnership or limited liability partnership, an officer of a corporation, trust, or association, a member, manager, or organizer of a limited liability company, or a licensed attorney or an agent authorized in writing to represent the applicant. "Authorized in writing" means the original notarized document signed by the individual, partner in the partnership or limited liability partnership, a member, manager, or organizer of a limited liability company, or an officer or director of the corporation of the applicant or licensee, identifying the applicant's agent(s), licensed attorney, or representative(s), the signature(s) of the applicant's agent(s), licensed attorney, or representative(s) and their specific powers of authorization. Facsimile or a reproduction of the original document shall not be accepted. The department reserves the right not to accept any documents signed by any person authorized in writing and/or require any person, applicant, or licensee to personally fill out and sign any forms or documents submitted to this department. Any violation or omission of information or documents by any person authorized in writing shall be deemed committed by the licensee or applicant.

§08-101-39 Notice of public hearing; license application.

(a) Upon the filing of the investigator's report upon any license application, the commission shall conduct a preliminary hearing for all license application, except for an alcohol license or a license in classes 7 through 10 and 13, and upon such preliminary hearing it may deny the application. A notice of preliminary hearing on a previously denied, refused, or withdrawn application shall be given seven days before the preliminary hearing to any person who submitted a written request for notice. If the application is not

denied upon a preliminary hearing, the commission shall fix a day for the public hearing of the application (other than an application for an alcohol license or a license in classes 7 through 10 and 13) and shall give public notice of the public hearing at least once in each of two consecutive weeks in the English language in the County, the date of the public hearing to be not less than forty-five days after the first notice. The notice shall require that all protests or objections against the issuance of the license applied for shall be filed with the director at or before the time of public hearing. Before giving such notice, the commission shall collect from the applicant the cost of giving the notice or require a deposit to cover the same.

(b) Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application to each of the following:

- (1) Not less than two-thirds of the owners of record of real estate, lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders' association situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment; provided that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners of record of real estate and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises for which the license is asked. Notice by mail shall be addressed to the last known address as shown in the records with the county department of finance, real property tax division, as filed by the person or the person's agent or representative; if address

is unavailable, to the last known address of the person concerned;

- (2) If the County reaches a population of two hundred fifty thousand or more, not less than two-thirds of the registered voters residing within, and small businesses situated within, a distance of five hundred feet from the nearest point of the premises for which the license is asked; provided that in meeting this requirement, the applicant shall mail notices to not less than three-fourths of the registered voters residing within, and small businesses situated within, a distance of one hundred feet from the nearest point of the premises for which the license is asked. This paragraph shall not apply to any applicant that is a hotel as defined in section 486K-1, HRS, a restaurant, or a convenience store. A notice sent pursuant to this paragraph shall be addressed to the "occupant" of the residential unit or small business; and
- (3) For each condominium project and cooperative apartment within the five hundred foot area, one notice of the hearing shall be sent by mail addressed "To the Residents, Care of the Manager," followed by the name and address of the condominium or cooperative apartment involved.

The notices required under this subsection shall be mailed at least forty-five days prior to the date set for the hearing. No promotional information shall be allowed on, or accompany, the notice. Before the hearing, and within seven days of having mailed the notices, the applicant shall file with the commission an affidavit that the notices have been mailed in compliance with this subsection. In addition to the affidavit (which shall be made available within the same seven-day period with proof of having mailed the notices), the applicant shall include both a master list of one hundred per cent of addressees and addresses required by paragraphs (1), (2), and (3), and another mailing list consisting of the portion of addressees and their respective addresses who

were mailed the notice pursuant to the requirements of paragraphs (1), (2), and (3). The affidavit, master list, and mailing list shall be made available within seven days (of the mailing of the notice by the applicant) by the commission for public review upon request. For purposes of this section, "master list" means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3), even if they were not actually included in the two-thirds and three-fourths requirement (as the case may be) of paragraph (1) or (2), and every condominium project and cooperative apartment qualifying in paragraph (3). The commission shall cancel the hearing if it does not receive the affidavit seven days after the applicant mailed the notices or if discovering that the affidavit is false.

(c) Notice to one co-owner and one co-lessee of real estate shall be sufficient notice to all co-owners and all co-lessees of that real estate; except that one notice shall be sent to each individual unit of a cooperative apartment as provided in this section.

(d) For purposes of this section, "owner of real estate" means one who has ownership of real estate. "Lessee" means one who holds real estate under lease. "Of record" means being documented or attested at the county department of finance, real property tax division. Any owner of real estate who has ownership in one or more real estate shall be considered and counted as a separate property owner for each ownership of real estate, be sent a separate notification for each ownership of real estate and shall have the right to lodge support for or protest against the granting of the license for each ownership of real estate. Any lessee leasing one or more real estate shall be considered and counted as a separate lessee for each leased real estate, be sent a separate notification for each leased real estate and shall have the right to lodge support for or protest against the granting of the license for each leased real estate. Notification mailed to owners of record of real estate, lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing

body of the shareholders' association shall be considered and counted for that specific real estate only and may not signify, be construed, or inferred as notification for any other real estate one may have ownership or lease of.

(e) Protests against the granting of a license upon such application or any person aggrieved by the commission's decision shall be limited to and may be so filed by any registered voter residing in a legal place of residence that is on file at the office of the county clerk, and which is located within five hundred feet of the nearest point at which the applicant proposes to establish or continue the applicant's business under the license applied for, or by any owner or lessee of record of real estate or by any owner of record of a share in a cooperative apartment situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment or by any governmental agency; provided that if a majority of the registered voters residing in the area within five hundred feet of the nearest point of the premises for which the license is asked, or a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked have duly filed or caused to be filed their protests against the granting of the license, or if there appears any other disqualification under the rules of the commission, the application shall be refused. Any registered voter who is deceased prior to the filing of the application or no longer residing in a residence, or any owner or lessee of real estate of record who is deceased or no longer in existence prior to or at the time of the filing of the application, or any owner or lessee of real estate of record who is deceased or no longer in existence prior to or at the time of the hearing, within five hundred feet of the nearest point at which the applicant proposes to establish or continue the applicant's business under the license, shall not be included in the count in support for or protest against, or of the total registered voters or total owners or lessees of real estate of record located within five hundred feet for which the license is asked. The

commission may consider any testimony for or protest against the granting of the license filed by a duly appointed trustee or representative of any owner or lessee of real estate of record.

(f) Any person may file a formal protest on behalf of any owner or lessee of record of real estate or registered voter situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked, provided that the owner, lessee, or registered voter, furnish to the commission, a notarized affidavit authorizing such person to protest against a specific application or specific matter before the commission. The affidavit must be filed with the commission prior to or at the time of the public hearing. A separate affidavit must be filed for each application and for each real estate of record.

(g) Any owner or lessee of real estate of record or registered voter located within any parcel whose boundary is located within the one hundred foot or five hundred foot radius from the nearest point from which the license is asked, shall be considered a property owner or lessee, or registered voter within that radius, and the owner or lessee of real estate shall be considered within the one hundred foot radius should the boundary of their parcel overlap the one hundred foot and five hundred foot radius.

(h) For purposes of this section, protest from one co-owner of record of real estate shall be considered one protest, provided however that protest submitted by the majority of co-owners of record of that real estate shall constitute a protest by all of the owners of record of that property, and protest from one lessee of record of real estate shall be considered one protest, provided however that protest submitted by the majority of co-lessees of record of that real estate shall constitute a protest by all of the lessees of record of that property.

(i) The commission may approve the granting of the liquor license at the public hearing on the condition that all necessary documents, governmental clearances, final inspection, and payment of fees are submitted. The department shall not issue said license until all

requirements for the issuance of a liquor license have been complied with.

§08-101-40 Condition of license.

(a) Every license issued shall contain the condition that it is subject to the rules of the commission, and any other laws or rules applicable to the business of the licensee including, but not limited to, the obtaining of all necessary clearances from all other governmental agencies, whether in existence at the time of the issue of such license or enacted, adopted, or amended from time to time thereafter, and to all applicable rules of the commission as the same may exist or be adopted or changed from time to time.

(b) All licensees and licensed premises shall be subject to the liquor laws and the rules of the commission, which shall be in effect twenty-four hours a day, seven days a week, throughout the year for which the license is issued.

(c) The commission may suspend or cancel the license, or change the class or category of any licensee who fail to meet the minimum requirements of or fail to operate its business in compliance with its authorized class or category or cease to provide an activity permitted by its class or category after proper notice and hearing in conformance with chapter 91, HRS.

§08-101-41 Criminal history record check.

(a) The commission shall request a background check on an applicant for a liquor license. For the purposes of this section, "criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

- (1) A search for the individual's fingerprints in the national criminal history record files and, if found, an analysis and any other information available pertaining thereto; and
- (2) A criminal history record check conducted by the Hawaii criminal justice data center, Maui

police department, or any governmental agency; provided that the Hawaii criminal justice data center, Maui police department, or any other governmental agency may charge a reasonable fee for criminal history record checks performed.

The background check, at a minimum, shall require the applicant to disclose whether:

- (A) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant may be unsuited for obtaining a liquor license; and
- (B) The judgment of conviction has not been vacated.

For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the commission by means of information obtained through the Hawaii criminal justice data center, Maui police department, or any other governmental agency. The applicant shall provide the Hawaii criminal justice data center, Maui police department, or any other governmental agency with personal identifying information which shall include, but not limited to, at a minimum, the applicant's name, social security number, date of birth, sex, and the applicant's fingerprints. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section.

- (b) The applicant shall submit to the commission:
 - (1) A statement signed under penalty of perjury whether the applicant has ever been convicted of a crime other than a minor traffic violation;
 - (2) Written consent to the commission to request and obtain criminal history record information for verification;
 - (3) Permission to be fingerprinted and completed fingerprint card;

- (4) Any reasonable fee assessed for criminal history record checks performed by the Hawaii criminal justice data center, Maui police department, or any governmental agency, which shall be submitted at the time of the submittal of application and made payable to the governmental agency performing the criminal history record check.

(c) The commission shall obtain criminal history record information through the Hawaii criminal justice data center, Maui police department, or any other governmental agency on the applicant. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable State or Federal laws or rules currently or hereafter in effect.

(d) Any applicant, including but not limited to, all persons, partners in the partnership or limited liability partnership, officers, directors, or persons owning or controlling twenty-five per cent or more of the applicant's outstanding corporate stock, members, managers, organizers, or any persons of a limited liability company, or any person, or entity or any person within an entity or its subdivision, that is in good standing and can legally do business in the State is required to submit all completed criminal history request(s) and fingerprint card(s) at the time of filing of the application to the department and to have local, state, national, and international criminal law enforcement agencies, provide such person's criminal history abstract directly to the department, if said abstracts cannot otherwise be obtained by the department. The commission may waive this requirement upon the applicant showing of good cause. Good cause shall include, but not limited to, applicant's inability to obtain the necessary clearance after due diligence, or have on file with the department a criminal record check that is less than one year old, or the applicant's fingerprints are not adequate for accurate classification and/or identification due to applicant's age, medical reason, disfigurement, or other abnormalities.

(e) Fingerprint cards. All fingerprint cards submitted by the applicant shall contain the required fingerprints and be completely filled out. Those fingerprinted by any personnel other than from the department or the Maui police department, must be accompanied by a letter from the fingerprint technician which contains the following:

- (1) Fingerprint technician's name, signature, address, telephone number, and fingerprint technician's certification issued by a law enforcement agency; and identity, social security number, and date the person was fingerprinted; or
- (2) The identity of the law enforcement agency that the fingerprint technician represents, the law enforcement agency's address, and telephone number; or
- (3) Fingerprint technician's name, signature, address, telephone number, identity of the entity the fingerprint technician represents, and a letter of certification issued by a law enforcement agency that the entity the fingerprint technician is employed at, is in good standing and have provided fingerprinting service to, and the fingerprints have been accepted by the law enforcement agencies within the state.

(f) The department may utilize criminal history record clearance obtained from an approved governmental agency.

(g) Licensee or any applicant shall submit, within thirty calender days, a completed fingerprint card of any person whose fingerprints appearing on the fingerprint card that was not adequate for accurate classification and/or identification by the Federal Bureau of Investigation and the required processing fee, upon receipt of notification. Any licensee who fails to comply shall not exercise the license until said completed fingerprint card is duly processed by the department.

§08-101-42 Management agreement.

Licensee shall apply for and secure the approval for any management agreement from the commission, in writing, prior to such management agreement taking effect. Management agreement shall be restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee and the licensee shall be responsible for and maintain exclusive control of the licensed premises. Management agreement shall be for the entire licensed premises. If the management agreement is made without the prior approval of the commission, the commission may, in its discretion, revoke or suspend the license. The licensee shall submit an application with the executed copy of the management agreement and can be subject but not limited to the submittal of any or all required documents under section 08-101-30 of the rules of the commission and shall be subject to a public hearing before the commission. If the commission finds that any of the proposed person or any principal of the management agreement is an unfit or improper person to hold a license in the person or principal's own right pursuant to section 281-45, HRS, it shall not approve the management agreement.

The term "management agreement" shall include any operating agreement and/or its equivalent where through such agreement the licensee allows an operator to manage and operate the licensed premises on behalf of the licensee.

§08-101-43 Address for service of process.

Address for service of process shall be that of the licensed premises unless otherwise indicated in writing. In all instances, the address for service of process shall be at a business address in the County and the mailing of any document by certified mail to the address for service of process shall meet the requirement of proper service.

§08-101-44 Further application.

(a) Except as provided for in section 281-13, HRS, if an applicant has at any time been denied or refused a

license, no further application from the applicant pertaining to the same premises or building location shall be considered for one year from the denial or refusal. For the purpose of this section, no further application pertaining to the same premises or building location shall be accepted from the applicant including any partner of the partnership, or officer, director, or stockholder owning twenty-five per cent or more of the outstanding stock of the corporation that has been denied, refused, or withdrawn due to protests of any application for a liquor license. "Building location" shall mean any building or portion thereof located within the same tax map key parcel of the original application, which was denied, refused, or withdrawn.

(b) If an application pertaining to a particular premises or building location is denied, refused, or withdrawn, the applicant for that same premises or building location shall submit a report explaining substantial changes from the circumstances that caused the previous denial, refusal, or withdrawal. The commission shall deny the application at the preliminary hearing unless the commission finds that substantial changes exists.

(c) The commission may consider the following factors in deciding whether to grant an application pertaining to a premises or building location for which an application has previously been denied, refused, or withdrawn:

- (1) Whether a majority of the registered voters residing within five hundred feet of the nearest point of the premises or building location for which the license is asked, or a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises or building location for which the license is asked, no longer oppose the granting of the license;
- (2) Whether plans for the construction, building design, use, or operation of the proposed

establishment have been altered such that they will not conflict with the character of the surrounding area. In evaluating the character of an area for the purposes of this section, the commission may consider the following factors:

- (A) The usual and existing types of business, residential, and recreational uses and activities within the area;
 - (B) The proximity of residential areas;
 - (C) The population density of the area;
 - (D) The typical or ambient noise levels of the area;
 - (E) The motor vehicle traffic volume, congestion, and noise; and
 - (F) Any other factors the commission finds relevant.
- (3) Whether the neighborhood board for the area where the premises is located has rendered a decision on the granting of the license;
 - (4) Whether the applicant is a fit and proper person to have a license; and
 - (5) Any other considerations deemed by the commission to affect the matter of the application, the issuance, or the exercise of the license applied for.

(d) The applicant shall submit a report evidencing a substantial change in the circumstances which caused the original denial, refusal, or withdrawal which must be submitted to the department at least fifteen calendar days prior to the date of the preliminary hearing or such hearing shall be canceled.

§08-101-45 Application for individual permits to receive shipments of liquor.

(a) Any unlicensed individual twenty-one years of age or older may apply to the commission on the form prescribed by the commission and upon payment of a nominal fee for a permit to receive a shipment of liquor from outside of the State within the limits allowed by chapter 281, HRS, and the rules of the commission.

(b) The application form shall include but not be limited to the following information:

- (1) A description of the liquor as to type, brand, or trade name, domestic or imported, and quantity;
- (2) Whether the liquor is an unsolicited gift unavailable in the State or part of the applicant's household goods;
- (3) The person the liquor is to be or has been received from.

§08-101-45.1 Reciprocal shipments of wine.

Notwithstanding any rule to the contrary, the holder of a license to manufacture wine in another state that affords holders of a class 1 license to manufacture wine under section 281-31 an equal reciprocal shipping privilege, may ship for personal use and not for resale not more than two cases of wine of its own manufacture per fiscal year (July 1 to June 30), with each case containing not more than nine liters, to any resident twenty-one years of age or older. Out-of-state wine manufacturers that are authorized to ship wine under this section shall:

- (1) Register and obtain approval from the department for shipment of wine within the County on an annual fiscal year basis; and
- (2) Submit to the department, a shipping invoice (which shall include, but not be limited to, the name, address, and date of birth of the

consumer, and the brand, value and quantity (liters)) of wine shipped for each delivery into the County, prior to or at the time the wine is shipped.

Delivery of a shipment into this County under this section shall not be deemed to constitute a sale in this County, provided that all administrative rules, ordinances, and state laws are complied with.

§08-101-46 Reduction or increase in area of licensed premises.

The commission may, in its discretion, permit the reduction or the increase in the area of the licensed premises of any licensee. The licensee shall be subject to notice requirements of sections 281-57, 58, and 59, HRS, whenever there is a substantial increase of the licensed premises and there are any owners or lessees of real estate of record or owners of record of shares in a cooperative apartment or individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the nearest point of the premises for which the extension is asked to the nearest point of such real estate or cooperative apartment that were not previously notified. Whenever any reduction or increase is permitted, the same shall be endorsed in some appropriate manner upon the license.

§08-101-47 Hearing; amending restrictions.

(a) The commission shall not consider any request to amend or remove a condition or restriction on the license within one year after addressing such matter, unless the commission is satisfied that the licensee has made substantial changes to the premises or the licensee has new substantial information. In no event shall any new application be accepted within six months from the date of the commission's placement of any restriction on the license or denial of any application for amending any restriction placed on the license.

(b) The commission shall schedule a hearing to determine if the new data or additional reasons are

significant to warrant acceptance of the application for the scheduling of a public hearing.

(c) Upon receiving an application request by any licensee to appear before the commission to amend any restriction(s) placed on the license, the director shall schedule a day for a public hearing of the request and shall publish one publication of notice of the hearing in some newspaper published in the English language having a general circulation in the County, the location, date and time of the hearing to be not less than fourteen days after one publication of notice. The notice shall require that all protests or objections against amending the condition(s) placed on the license be filed with the commission at or before the time of hearing. The department shall collect from the licensee the cost of making the publication or require a deposit to cover the publication.

(d) The licensee shall mail a notice setting forth the restriction(s) placed on the license, the restriction(s) to be amended, and the date, time, and place of the hearing on the application to amend the restriction(s) placed on the license to each of the following:

- (1) Not less than two-thirds of the owners of record of real estate, lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders' association situated within a distance of five hundred feet from the nearest point of the premises for which the license restriction(s) is asked to be amended to the nearest point of such real estate or cooperative apartment; provided that in meeting this requirement, the licensee shall mail a notice to not less than three-fourths of the owners of record of real estate, lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises for

which the license restriction(s) is asked to be amended. Notice by mail shall be addressed to the address of record as shown at the county department of finance, real property tax division. "Of record" means being documented or attested at the department of finance, real property tax division, on the date of the filing of the application to amend any restriction(s) placed on the liquor license.

- (2) In addition to the notification of owners of record of real estate, lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders' association situated within a distance of five hundred feet from the nearest point of the premises for which the license restriction(s) is asked to be amended to the nearest point of such real estate or cooperative apartment, for each apartment, condominium project, and cooperative apartment within the five hundred foot area, one notice of the hearing shall be sent by certified mail addressed: "To the Residents, Care of the Manager," followed by the name and address of the apartment, condominium, or cooperative apartment involved.
- (3) The notices shall be mailed at least thirty calendar days prior to the date set for the hearing. The licensee shall file not later than seven calendar days after the mailing of the notices with the commission an affidavit that the notices have been mailed in compliance with this section. The commission shall cancel the hearing if the commission has not received the affidavit seven calendar days after the mailing of the notices or if discovering that the affidavit or any information submitted by the applicant is false.

- (4) Notice to one co-owner of real estate shall be sufficient notice to all co-owners of that real estate, and notice to one co-lessee of real estate shall be sufficient notice to all co-lessees of that real estate; except that one notice shall be sent to each individual unit of a cooperative apartment as provided in this section. Protest from one co-owner of real estate shall be considered one protest, provided however that protest submitted by the majority of co-owners of record of that real estate shall constitute a protest by all of the owners of record of that property. Protest by one co-lessee of real estate shall be considered one protest, provided however that protest submitted by the majority of co-lessees of record of that real estate shall constitute a protest by all of the lessees of record of that property.
- (5) For purposes of this section, "owner of real estate" means one who has ownership of real estate. "Lessee" means one who holds real estate under lease. Any owner of real estate who has ownership in one or more real estate shall be considered and counted as a separate property owner for each ownership of real estate, be sent a separate notification for each ownership of real estate and shall have the right to lodge support for or protest against the amending of any restriction(s) placed on the license for each ownership of real estate. Any lessee leasing one or more real estate shall be considered and counted as a separate lessee for each leased real estate, be sent a separate notification for each leased real estate and shall have the right to lodge support for or protest against the amending of any restriction(s) placed on the license for each leased real estate. Notification mailed to owners of record of real estate, lessees of record of real estate, and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the

managing agent or governing body of the shareholders' association shall be considered and counted for that specific real estate only and may not signify, be construed, or inferred as notification for any other real estate one may have ownership or lease of.

§08-101-48.1 Liquor license prohibited; where.

(a) The commission may deny or restrict the issuance of a liquor license for onsite sale and consumption by the drink to any applicant whose establishment is or would be located within five hundred feet of a public or private elementary, intermediate, or high school, or public playground used extensively by minors, as determined by the commission; provided that the commission shall deny the issuance of a liquor license if forty per cent of either the:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or
- (2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked;

have duly filed or caused to be filed their protests against granting the license. The distance of five hundred feet shall be measured from the boundary of the school or public playground to the boundary of the applicant's premises. Public or private beaches, and public or private day care centers located in or adjacent to commercial areas, shall not be deemed schools or public playgrounds for purposes of this section. This section shall not apply to establishments located within areas designated by the appropriate counties for resort purposes, or to hotel liquor license applicants.

(b) This section shall apply only to the issuance of new liquor licenses for onsite sale and consumption by the drink and not to any renewal of such licenses.

\$08-101-49

(Reserved)

April, 2007

101-76

SUBCHAPTER 5

FEEES

\$08-101-50	Fees for liquor license, temporary license, duplicate license; solicitors' and representatives' permits; certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof; and others and terms
\$08-101-51	Solicitors' and representatives' permits and terms
\$08-101-52	Guaranty
\$08-101-53	Concession agreement
\$08-101-54 to 59	(Reserved)

\$08-101-50 Fees for liquor license, temporary license, duplicate license; solicitors' and representatives' permits; certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof; and others and terms.

(a) All licensees shall pay an annual license fee, which shall be the basic fee as defined in subsection (b) of this section plus the percentage fee as defined in subsection (d) of this section.

(b) Basic fee. This fee shall be paid in advance not later than each June 15th, prior to the fiscal year for which the license is issued. The fee paid for a license issued on any other date shall be reckoned proportionally from the first day of the month in which the business is commenced to the expiration date or to the next payment due date.

<u>Class</u>	<u>Kind</u>	<u>Basic Fee</u>
(1) Manufacturers (including rectifiers)	(A) Beer (B) Wine	\$ 600 600

	(C)	Wine manufactured from fruits grown in the State	300
	(D)	Alcohol	200
	(E)	Other liquors	640
(2)	Restaurant	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(3)	Wholesale	(A) General	2,400
		(B) Beer and Wine	1,800
		(C) Alcohol	200
(4)	Retail	(A) General	560
		(B) Beer and Wine	260
		(C) Alcohol	200
(5)	Dispenser	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(6)	Club		320
(7)	Vessel		300
(8)	Transient Vessel, per day		25
	Monthly		100
	Yearly		1,200
(9)	Tour or Cruise Vessel		300
(10)	Special, per day	(A) General	25
		(B) Beer and Wine	15
		(C) Beer	10
(11)	Cabaret		1,200
(12)	Hotel		1,200
(13)	Caterer, per day		25
(14)	Brewpub		1,000

(c) Temporary, solicitors', representatives', duplicate license, certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof, alcohol, and other fees.

- (1) Temporary license. The fee for a temporary license of any class and kind shall be \$200 for an initial period of one hundred twenty days, or any part of such initial period, and an additional \$100 for one additional sixty-day renewal of such license.
- (2) The fees for solicitors' and representatives' permits shall be for each license year commencing July 1 and ending on the succeeding June 30 or fraction thereof and shall be in the following amounts:
 - (A) General \$1,800
 - (B) Beer and Wine \$1,200
 - (C) Alcohol \$ 200
- (3) The annual fee for a permit to purchase alcohol for non-beverage purposes shall be \$50 for each fiscal year, commencing July 1 and ending the succeeding June 30, or a fraction thereof. The director may waive the fee for a permit to purchase alcohol for non-beverage purposes for any County or State governmental agencies.
- (4) The fee for issuance of a duplicate liquor license in place of one alleged to have been lost or destroyed shall be \$10 plus any cost incurred for postage and handling.
- (5) The fee for the certification examination, a certificate for registration of employee approved by the director, minor, employee of class 5, category D, or any duplicate thereof shall be \$10 plus any cost incurred for postage and handling.

(6) The fee for a permit to import liquor shall be \$5.

(d) Percentage fee.

(1) Licensees in classes 2(A), (B) and (C), 4(A) and (B), 5(A), (B) and (C), 6, 7, 9, 11, 12, 13, 14 and temporary license, as defined in subsection (b) of this section, shall be subject to the basic fee plus a percentage fee. Licensees in class 1 (other than a class 1 manufacturer, whose wine is manufactured from fruits grown in the State), and class 3, as defined in subsection (b) of this section, shall be subject to basic fee plus the percentage fee of retail liquor sales to any person for private use and consumption. Licensees in class 9, as defined in subsection (b) of this section, shall be subject to basic fee plus percentage fee of four times the total amount of liquor purchased from class 1, manufacturers' licensee, and class 3, wholesale dealers' licensee. Licensee shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report.

(2) The percentage fee for each current fiscal year shall be based upon the following formula, which shall establish the percentage to be applied to the gross sales or four times the total amount of liquor purchased of each licensee:

$$\frac{EE - BF - C}{EGS}$$

= Percentage

EE = Estimated Expenditures (current fiscal year)

BF = Basic Fees (current fiscal year)

C = Carryover (prior fiscal year)
(Carryover in excess of twenty per cent as provided in section 281-17.5, HRS)

EGS= Estimated Gross Sales (prior fiscal year)

- (3) Licensees in the above-mentioned classes shall file with the director on a form prescribed by the commission a report showing true and accurate gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the director and shall be completed, filed at, and accepted by the department not later than 4:30 p.m. on July 31 after the date of expiration of such licenses, and at such other times or intervals as the director may require. The gross sales of liquor report shall be on the original form(s) and contain the original signature; duplicates or copies shall not be accepted.
- (4) After a tally of all total gross liquor sales filed by the due date by the licensees, the percentage fee due and payable shall be assessed each licensee and shall be paid within thirty-one calendar days of receipt of said assessment.
- (5) In case of transfer of such licenses, the report shall be filed and paid by the transferor immediately after approval by the commission and before the actual transfer of the license and the business of the licensee-transferor. The percentage fee based on the current applicable percentage fee shall be paid prior to the issuance of the license.
- (6) Any licensee who fails to file the report or fails to pay the percentage fee due on or before the due date shall not exercise his license after the due date and until said report has been filed or percentage fee paid, or both.
- (7) Where licenses are revoked, expired, or canceled, or the licensee closes out the business for which the license is held, the report shall be filed and the percentage fee due paid within five calendar days of the revocation, expiration, cancellation or closing out the business. The percentage fee

due shall be based on the current applicable percentage.

- (8) Any licensee who fails to pay the percentage fee by the due date shall be assessed a late charge of five per cent per month on the balance due until such fees are paid in full. The five per cent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.
- (9) Any licensee who fails to pay the percentage fee within ninety days of the due date, shall be notified and scheduled for hearing. Upon satisfactory proof of such prohibited activity, the license shall be revoked.
- (10) No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to the rules of the commission. Records shall be maintained for a period of four years.
- (11) All licensees shall have available for inspection within the County, books or records, or both, showing all income, purchases, and expenses of their liquor license business. These books and records, including but not limited to daily sales records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Licensee or its employees shall record the sale of liquor

at the time of the transaction on its daily sales records.

(12) Any licensee who fails to pay any fee due on or before the due date or when any check, money order, or the like that is utilized by the licensee for payment of such fee is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said fee and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.

(13) Any licensee who failed to file the gross sales of liquor report by the due date, shall be assessed the percentage fee equal to the highest percentage fee due and payable by the licensee of the same class or the highest percentage fee due and payable by any licensee if there is no licensee in the same class.

(e) Filing fees with application. A filing fee of \$50 shall be paid with any application for an initial issuance of a license or for a transfer of a license in accordance with and in the manner prescribed by law.

(f) Forfeiture of fee paid. If any license or application is canceled or withdrawn by the licensee or applicant or the license is revoked or canceled by the commission or the board, the fee paid for the application or license shall be forfeited to the department as respect to the application or unexpired portion of the fee paid for the license.

(g) Any licensee who fails to pay any penalty ordered by the board for the violation of the liquor laws of the State or of the rules of the commission by the due date shall be assessed a late charge of five per cent per month on the balance due until such fees are paid in full. The five per cent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.

(h) Any licensee who fails to pay any monetary assessment due on or before the due date or whose check or the like that is utilized for payment of such assessment is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said assessment and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.

§08-101-51 Solicitors' and representatives' permits and terms.

(a) Every solicitor's and representative's permit, whenever issued, shall expire with the close of June 30, next succeeding its issuance and shall be renewable each July 1.

(b) No solicitor or representative shall be permitted to have, own, possess, or control any liquor.

(c) Solicitors or representatives shall keep separate and distinct records of account wherein shall be entered the name of the licensee, license number, place of business, the day, month, and year in which the sale was made, and the quantity and price of liquor sold to each licensee, and which shall be made, at all times, available immediately upon demand for inspection by the commission, director, or any investigator of the department. Records must be maintained for a period of four years.

(d) All holders of any manufacturers' license or a wholesale dealers' license issued by the commission of any county within the State, is prohibited from soliciting or taking any orders from licensees within the County, for direct shipment for liquor unless such manufacturer or wholesale dealer or its representative apply for and obtain a solicitors' or representatives' permit from the commission.

(e) Any manufacturer or wholesale dealer who obtained a solicitors' or representatives' permit or have a solicitor or representative who solicits or takes orders for liquor, shall accurately report revenues from

gross liquor sales within the County and/or properly complete the gross liquor sales report. It shall be the manufacturer or wholesale dealer's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report. Records shall be maintained for a period of four years.

(f) Any manufacturer or wholesale dealer who obtained a solicitors' or representatives' permit or have a solicitor or representative who solicits or takes orders for liquor shall have available for inspection within the County, books or records, or both, showing all income, sales, purchases, and expenses of their liquor license business. These books and records including but not limited to, daily sales records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Solicitors or representatives or its employees shall record the sale of liquor at the time of the transaction on its daily sales records.

§08-101-52 Guaranty.

(a) The applicant or licensee shall post a bond that is approved by and filed with the department. The bond shall be not less than \$5,000 or 1.5 times the total license fees paid in the current fiscal year or for any licensee that operated less than one full fiscal year, 1.5 times the prorated amount as determined by the department to reflect the basic fee and percentage fee of a year of operation, whichever is greater, shall be irrevocable and subject to the following conditions and any other conditions and restrictions set forth by the department.

- (1) The bond cannot be canceled or terminated without written permission from the department. The bond company shall pay the total sum forthwith to the department whenever

there is any attempt to cancel or terminate the bond without the expressed written consent of the department, or the failure to submit payment for renewal by the due date for renewal by the principle.

- (2) The licensee shall automatically increase the penal sum of the bond to reflect any required increase pursuant to this section upon written notification by the director.
- (3) Payment shall be immediately paid upon written demand by the director.
- (4) The bond certificate and yearly renewal certificate shall be filed with the department.
- (5) The term of the bond shall be for the entire period of the term of the license to be issued.
- (6) The bond shall contain the name of the agent and the agent's telephone number and address.

(b) In lieu of the bond, an individual, partners of the partnership, limited liability partnership, members, managers, organizers, or any person of a limited liability company, officers, directors, and stockholders owning or controlling twenty-five per cent or more of the outstanding stock of a corporation, trust, or association that is issued a liquor license shall be personal guarantor(s) of and liable for any payments or monies due to this department. The individual, partners of the partnership, limited liability partnership, members, managers, organizers or any person of a limited liability company, officers and directors of a corporation, trust, or association that is issued a liquor license, shall be personally liable for all costs associated with the enforcement or collection, including but not limited to attorneys' fees and court costs, in the event that suit is instituted to enforce this guaranty.

(c) Licensee shall not exercise its license whenever it withdraws or cancels any bond or personal

guarantee, unless the licensee files a bond whenever any personal guarantee is canceled or withdrawn or files the required personal guarantee(s) whenever any bond is canceled or withdrawn, and files its gross liquor sales report and makes payment of the percentage fee due on the date of the filing of the withdrawal or cancellation of the personal guarantee or bond.

§08-101-53 Concession agreement.

(a) Licensee shall apply for and secure approval for any concession agreement from the commission, in writing, prior to such concession agreement taking effect. If the concession agreement is made without the prior approval of the commission, the commission may, in its discretion, revoke or suspend the license.

The concession agreement shall include, but not be limited to, the following:

- (1) Concessionaire cannot possess, sell, serve, or allow the consumption of any liquor within the concession area.
- (2) Concessionaire shall comply and obtain all necessary clearances from other governmental agencies.
- (3) Ingress and egress of the concessionaire, its employees, agents, servants, or business patron shall be limited to the business hours of the liquor licensee. An on-duty certified manager, assistant manager, or supervisory personnel of the licensee shall be within the licensed premises whenever the concessionaire, its employees, agents, servants, or patrons are within the premises.
- (4) The concession area shall be subject to, at any time, inspection by the department's personnel or by any personnel of other governmental agencies.
- (5) The licensee shall be responsible for any conduct and operation of the concessionaire.

Any violation of the liquor laws or rules of the commission within the area of the concessionaire or by the concessionaire, its employees, and patrons, shall be construed as a violation committed by the liquor licensee.

- (6) The concession area shall be considered part of the licensed premises.

§§08-101-54 to 59 (Reserved)

SUBCHAPTER 6

PROHIBITIONS

\$08-101-60	Prohibitions
\$08-101-61	Minors
\$08-101-62	Prizes, gifts, premiums, and other inducements
\$08-101-63	Illegal liquor on licensed premises
\$08-101-64	Noise levels
\$08-101-65	Refusal or tampering with evidence
\$08-101-66	Labeling
\$08-101-67	Refilling
\$08-101-68	Drugs
\$08-101-69	Practice to promote excessive consumption of liquor; prohibited

\$08-101-60 Prohibitions.

(a) No person shall, except as permitted in section 291-3.4, HRS, consume any liquor on any public highway or any public sidewalk.

(b) At no time under any circumstances shall any licensee or its employee:

- (1) Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by:
 - (A) Any minor;
 - (B) Any person at the time under the influence of liquor, drugs, or any combination thereof;
 - (C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor; or
 - (D) Any person for consumption in any vehicle that is licensed to travel on public highways;

Provided that the consumption or sale of liquor to a minor shall not be deemed to be a violation of this subsection if, in making the sale or allowing the consumption of any liquor by a minor, the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that the minor was of legal age and the licensee acted in good faith. It shall be incumbent upon the licensee to prove that the licensee so acted in good faith.

- (2) Permit any liquor to be consumed on the premises of the licensee or on any premises connected therewith, whether purchased or not, except as permitted by the terms of its license;
- (3) Permit any liquor to be sold or served by any person eighteen to twenty years of age except in licensed establishments where selling or serving the intoxicating liquor is part of the minor's employment, and where there is proper supervision of these minor employees to ensure that the minors shall not consume the intoxicating liquor;
- (4) Permit any liquor to be sold or served by any person below the age of eighteen years upon any licensed premises, except in individually specified licensed establishments found to be otherwise suitable by the commission in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, the state community college system, or a federally sponsored personnel development and training program, under arrangements that ensure proper control and supervision of employees;
- (5) Knowingly permit any person under the influence of liquor, drugs, or any combination thereof, or disorderly person to be or remain in or on the licensed premises;

- (6) Fail immediately to prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises;
- (7) Permit or fail immediately to prevent or suppress on any premises licensed for the consumption of alcoholic beverages thereon, any obscene public exhibition dancing, either with or without partners, or any entertainment using or employing any obscene gesture, language, or songs;
- (8) Sell any draught beer unless upon the faucet, spigot, or outlet wherefrom the beer is drawn there is attached a clear and legible notice, placard, or marker which in the English language indicates and declares the name or brand adopted by the manufacturer of the draught beer, so situated as to be clearly legible for a distance of at least ten feet from the spigot, faucet, or outlet, to a purchaser with normal vision;
- (9) Receive from a person as payment or as a consideration for liquor, any personal or household goods, including clothing and food, or any implements of trade. Any person violating this paragraph shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 281-102, HRS;
- (10) Permit any liquor to be removed from the premises of the licensee or permit any liquor to be removed by a patron from the designated area for liquor consumption regardless whether or not it was purchased;
- (11) Fail to exercise due care in determining whether a person is under the influence of liquor, drugs, or any combination thereof;
- (12) Conduct or allow any activity unless it is specifically allowed by chapter 281, HRS, or the rules of the commission;

- (13) Have any minor in possession of any open container of liquor. This paragraph shall not apply to any minor participating in a job training or employment program approved by the commission;
- (14) Fail to provide any information, documents, books, or records requested by the commission, board, or the department.

§08-101-61 Minors.

(a) A minor is any individual under the age of twenty-one years.

(b) The sale or service of liquor to a minor or the consumption of liquor by a minor on any licensed premises is prohibited.

(c) For the purpose of determining age of majority, licensees are responsible for the proper checking of personal identification. Documents acceptable as personal identification shall be limited to:

- (1) A valid federal or state identification card;
or
- (2) A passport; or
- (3) A valid state or international driver's license.

(d) Such documents shall contain a photograph and be unexpired, unaltered, and undamaged.

(e) No licensee shall employ or permit any minor to entertain in any licensed premises upon which liquor is consumed without first registering such minor in accordance with the procedure prescribed by the commission.

(f) No licensee shall permit any minor to remain in or about any portion of the licensed premises used or set aside for the sale or consumption of liquor, except as provided by law or under the following circumstances:

- (1) When the licensee establishes, at a hearing on an alleged violation, that the appearance of the minor and the attending circumstances would cause a reasonable belief that such minor was of legal age; or
- (2) When all of the following apply:
 - (A) The minor is waiting to order or be served, or is consuming food;
 - (B) Which shall be consumed before 12 midnight;
 - (C) In a licensed premises which:
 - (i) the licensee has on file at the department, a current approved financial report that shows at least thirty per cent of the establishment's gross revenue is derived from the sale of food that is prepared and cooked within its kitchen facilities and served to patrons within the premises;
 - (ii) has kitchen facilities within the licensed premises which require department of health and department of fire control approvals; and
 - (iii) is offering at the time the minor is present, meals composed of protein, carbohydrate, and fruit or vegetable, which are prepared and cooked within its kitchen facilities at the time of ordering; or
- (3) When, except as provided by law, and under all of the following:
 - (A) In a licensed premises which the licensee has on file with the department a current yearly approved financial report that shows at least thirty per cent of the

establishment's gross revenue is derived from the sale of food that is prepared and cooked at the time of ordering within its department of health and department of fire control approved kitchen facilities and served for consumption by patrons within its premises, except as provided by law;

- (B) The minor is accompanied by his or her parent, legal guardian, or person authorized by the parent or legal guardian, twenty-one years of age or older;
- (C) Food service, music, or entertainment are being provided;
- (D) The minor may not be within the premises after 12 midnight; and
- (E) It shall be incumbent upon the licensee to prove that the person accompanying the minor is the legal guardian of the minor or person authorized by the parent or legal guardian.

(g) Public dancing by minors in licensed premises shall be permitted only when:

- (1) Accompanied by a legal, responsible adult; and
- (2) Food service, music, and entertainment are being provided; and
- (3) An approved area is set aside and designated a non-consumption area where minors shall remain; and
- (4) The dancing concludes by 10:00 p.m.

(h) The commission may authorize an extension of hours for special occasions, events, or circumstances upon application by the licensee for minors to dance or remain, or both, within the premises.

§08-101-62 Prizes, gifts, premiums, and other inducements.

(a) Unless otherwise provided by this rule, it shall be unlawful for any person to offer or to provide any intoxicating liquor as a prize or inducement at any public amusement, public gathering, or place open to the public.

(b) It shall be unlawful for any person acting as agent or representative of a nonresident principal or for any licensee directly or indirectly, or through any subsidiary or affiliate, to give any premium or free goods of intoxicating liquor or other merchandise in connection with the sale of any intoxicating liquor, or to give any premium or free goods of intoxicating liquor in connection with the sale of other merchandise.

(c) No retail dealer and no licensee who is authorized to sell liquor for consumption on the licensee's premises shall solicit or accept, either directly or indirectly, a premium or free goods of any nature in connection with the retail dealer's or licensee's purchase of liquor from a manufacturer or wholesale dealer.

§08-101-63 Illegal liquor on licensed premises.

(a) No licensee shall have any illegal liquor or liquor not purchased from a class 3, wholesale dealers' licensee, or a class 1, manufacturers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or wholesale dealer, on any portion of the licensed premises.

(b) The finding of any illegal liquor or liquor not purchased through the liquor license issued from a class 3, wholesale dealers' licensee, or a class 1, manufacturers' licensee, on a licensed premises under circumstances warranting the belief that it is being kept, served, or distributed by the licensee shall be sufficient evidence for summary suspension or revocation of the license covering such premises.

(c) The licensee ordering, acquiring, or purchasing any liquor product under the licensee's name or its trade name, or having any liquor product listed on any receipt or purchase summary or its like with the licensee's name or trade name, or any combination thereof, shall be construed as prima facie evidence that such liquor product was purchased or acquired through the licensee's liquor license.

§08-101-64 Noise levels.

(a) Definitions.

"Ambient noise" means the totality of sounds in a given place and time, not including the specific source being measured. The ambient noise level may be estimated from the sound levels measured during non-operation of the noise source or by sound levels measured at one or more points near the point of measurement where the noise source is inaudible.

"Complainant" means a person owning, leasing, renting, or residing at a property within the vicinity of a licensee, who files a complaint with the department against the licensee alleging a violation(s) of this section.

"dBA" means a unit of measurement of decibels at the "A" level. "A" level means the total sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Decibels" (dB) means the unit for measuring the volume of sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (twenty micronewtons per square meter).

"MPSL" means maximum permissible sound levels.

(b) No licensee within the County shall make, cause the making of, continue to make, suffer, permit to be made, or permit the continuance of, from its licensed premises or any adjacent premises under the licensee's control any noise which results in a complaint from one

or more resident(s) or tenant(s) in the vicinity and exceeds the maximum permissible sound levels as set forth in this section.

(c) Maximum permissible sound levels in dBA.

The maximum permissible sound levels in dBA are:

Zoning Districts	Daytime	Nighttime
	7 a.m. - 10 p.m.	10 p.m. - 7 a.m.
Class A	55	45
Class B	60	50
Class C	70	70

(d) There shall be a violation of this section when: by measurement at, or if appropriate within, the property lines of the complainant, for a combined total of two minutes in any twenty minute period, noise levels exceed the pertinent MPSL for the complainant's zoning and exceed the ambient noise level by three or more decibels.

(e) Classification of zoning districts. Zoning districts shall be:

- (1) Class A zoning districts shall include all areas equivalent to County lands zoned conservation, residential (R1, R2 or R3) or similar.
- (2) Class B zoning districts shall include all areas equivalent to County lands zoned apartment (A1 & A2), business (B1 to B3 & B-CT), commercial, hotel (H1, HM & H2), resort (B-R), or similar.
- (3) Class C zoning districts shall include all areas equivalent to County lands zoned agriculture, industrial (M1 & M2), or similar.

- (4) For any area not zoned or interim zoned, the comparable State land use classification shall apply.

(f) In mixed zoning districts, the lowest MPST shall apply. For example the residential MPST shall apply in a business mixed use, which allows for residential uses.

(g) The commission may, by a two-thirds majority vote, set a lower MPST for a license upon finding that the location of the licensed premises and the unusual nature of the pre-existing surrounding uses are such that the standard MPST are insufficient to permit reasonable conduct of the pre-existing uses, including but not limited to hospitals, nursing homes, or residential health care facilities, and that without such lower MPST, the license application or renewal will more likely than not be denied.

- (h) Enforcement procedures:

- (1) A complaint shall be valid for a period of thirty calendar days from the date the complaint was filed with the department.
- (2) Upon receipt of a complaint, the department shall have thirty days from the date the complaint was filed with the department to investigate the complaint which shall include the monitoring of the noise emanating from the premises.
- (3) Any investigation(s) conducted of the complaint within thirty days from the date the complaint was filed, its findings, and any violation of this section by the licensee shall be considered part of the original complaint.
- (4) The department may issue a complaint and accusation against the licensee if, by measurement at or within the property lines of the complainant, noise levels exceed the pertinent MPST for the complainant's zoning

and exceeds the ambient noise level by three or more decibels for a combined total of two minutes in any twenty minute period.

§08-101-65 Refusal or tampering with evidence.

At no time under any circumstances shall any licensee or its employee refuse to deliver or accede to the taking of any evidence, or tamper with any evidence, requested or taken by the commission or investigator thereof, who has reason to believe or suspect on complaint or otherwise, or in any of its investigation that the conditions of any license are being violated.

§08-101-66 Labeling.

(a) It shall be unlawful for any licensee or its employee(s) to possess or sell any liquor with labels not approved by the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms or is not in conformity with chapter 281, HRS.

(b) There shall be no misrepresentation of any type on the label.

(c) Labels shall not permit the showing of:

- (1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or flagellation.
- (2) Scenes wherein a person displays any portion of the vulva, anus, genitals, cleft of the buttocks, or any portion of the female breast below the top of the areola or any of the prohibited activities within the rules of the commission, or any State, Federal or local laws, ordinance or codes.
- (3) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities within this section.

§08-101-67 Refilling.

(a) No licensee shall offer for sale or possess on its licensed premises:

- (1) Any original package of liquor which contains any kind or quantity of liquor other than that liquor that has been sealed and labeled by the manufacturer of the liquor to contain and to convey said liquor.
- (2) Any original package of liquor to which there has been added any water or other substance.
- (3) Any bottles, casks, or other containers containing liquor which contain any deleterious, contaminated, filthy, putrid substance, or insects.

(b) Liquor must be served from the original manufacturer-sealed container, provided beer or wine may be poured from the original manufacturer-sealed container into a container such as a pitcher, carafe, or its like, and shall be immediately served for consumption.

(c) Licensee or its employees are prohibited from refilling an original manufacturer container with the same or different brand of liquor.

§08-101-68 Drugs.

(a) The possession, distribution, or use of any illegal drugs or narcotics on the licensed premises by any person is strictly prohibited.

(b) No licensee shall promote, encourage, or permit any person on the licensed premises to possess, distribute, or use illicit or illegal drugs.

§08-101-69 Practice to promote excessive consumption of liquor; prohibited.

(a) No licensee of any premises licensed to sell liquor for consumption on the premises shall:

- (1) Sell, advertise, or offer to sell "all the liquor you can drink" for a fixed price; or encourage, sponsor, permit or have any promotion, game or contest that involves the consumption of liquor or the awarding of liquor as a prize;
- (2) Serve an unlimited amount of liquor during a set period of time for a fixed price, provided this provision does not apply to class 2, class 9, and class 12 licensees:
 - (A) when such function is not open to the general public and for which a hosted bar is utilized such as weddings, private parties, and fundraising functions; or
 - (B) where champagne may be inclusive with brunch; or
 - (C) where liquor may be inclusive with luaus; or
 - (D) where liquor may be inclusive with tour or cruise vessel operations;
- (3) Employ any person for the purpose of selling, furnishing or serving liquor under any scheme, plan, or arrangement involving the payment for such services on the basis of any commission, percentage, or such similar method of payment without the prior approval of the commission.

(b) No licensee shall sell, serve, or furnish liquor to any person at a cost below licensee's cost of liquor purchased at wholesale, except as may be provided in the rules of the commission. For this section, cost of liquor shall mean the licensee's wholesale purchase price including any tax, shipping and handling cost.

SUBCHAPTER 7

REGISTRATION OF PERSONNEL

\$08-101-70	Employee approved by the director
\$08-101-71	Registration of employees of class 5, category D, licensees
\$08-101-72	(Reserved)
\$08-101-73	Employment and registration of minors
\$08-101-74	Requirement for registration of employees or as an employee approved by the director
\$08-101-75	(Reserved)
\$08-101-76	Registration certificate
\$08-101-77	Certification certificate for "employee approved by the director", counties
\$\$08-101-78 to 79	(Reserved)

\$08-101-70 Employee approved by the director.

(a) On every licensed premises, an on-duty employee duly approved by the director must be in active charge of each premises during all times that such premises is open for business.

(b) The term "employee approved by the director" means a managerial or supervisory employee or the holder of the license who is twenty-one years of age or older, has successfully completed an examination administered by the department on liquor laws and rules of the commission, attended a server training program approved by the department and issued a certificate by the department. The certificate shall be valid for a term of four years from date of issue and must be in the employee's possession or be readily available on the premises for inspection at all times while on duty.

(c) All certificates issued prior to January 16, 1995, shall be valid for four years from the date of issue.

(d) Certificates must be renewed by re-examination.

(e) On class 12, hotel licensed premises, an on-duty employee duly approved by the director must be in active charge and be at each liquor dispensing area at all times whenever there is sale, service, or consumption of liquor.

(f) Licensee shall have available on the licensed premises a time sheet showing in English the legal first name and surname of all employees, including and not limited to managers, assistant managers, and employees approved by the director, when such employee is on duty. Time record entries shall be made at the time the employee reports on duty and again when the employee goes off duty.

(g) Licensee shall be responsible to have all managers, assistant managers, supervisory personnel, or any other person, who performs any type of managerial or supervisory functions in conjunction with the operation, maintenance, supervision or management of the licensed premises, directly or indirectly, meet the minimum requirements set forth by the commission to be an "employee approved by the director."

(h) An on-duty employee duly approved by the director must be in active charge and be within each liquor dispensing or consumption area at all times whenever there is sale, service, or consumption of liquor.

§08-101-71 Registration of employees of class 5, category D, licensees.

(a) In a premises in which employees or entertainers are compensated to sit with patrons whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of such patrons, the licensee shall cause all employees to be registered with the department at the time of employment. On every licensed premises, an on-duty employee duly approved by the director shall be in active charge of each premises during all times that such premises is open for business. The class 5, category D employee's registration card shall be in the employee's possession or be readily

available on the premises for inspection at all times while on duty.

(b) Employees, entertainers, or any other persons therein shall be twenty-one years of age or older.

(c) Licensee shall have available on the licensed premises a time sheet prescribed by the commission showing in English the legal first name and surname of such employee when such employee is on duty. Time record entries shall be made at the time the employee reports on duty and again when the employee goes off duty.

§08-101-72 (Reserved)

§08-101-73 Employment and registration of minors.

(a) No person under twenty-one years of age shall be employed in any section of a licensed premises where liquor is sold, stored, served, consumed or readily accessible or available unless the licensee has registered and obtained approval from the director for the employment of, or the entertainment by, such minor.

(b) No person under eighteen years of age shall be employed in any section of the premises where liquor is sold, served or consumed, or allowed to entertain in said areas unless the licensee has obtained written permission from the commission for employment of, or entertainment by, such minor.

(c) The person under eighteen years of age, and his/her parent or legal guardian shall be interviewed by an investigator, who shall submit a report to the director regarding the employment of the individual under eighteen years of age. If the standards set by the commission are complied with, the director may approve the licensee's request and may include any conditions which the director deems necessary for the protection of the person under eighteen years of age.

(d) After employment approval has been obtained, the employee under the age of eighteen shall be registered pursuant to subsection (a) of this section.

(e) Applications for permission for persons under eighteen years of age to work on licensed premises shall be submitted by the parent or legal guardian of the person under eighteen years of age and shall include the following:

(1) Proof that the proposed employee is at least sixteen years of age; and

(2) Written consent of a parent or guardian.

(f) The duties of a person under eighteen years of age shall not include selling, stocking, handling, coming in contact with, or serving liquor, unless that person is in an approved program under section 281-78(b)(4), HRS.

(g) The licensee shall provide adequate supervision at all times for any employee under twenty-one years of age while such employee is employed on the licensed premises. Supervision shall be by an "employee approved by the director."

(h) Any person under the age of eighteen who does not have an approved valid picture governmental identification or proof of social security, or both, and is applying for their initial registration, may be issued a temporary thirty calendar day registration permit. Such person shall complete and submit all required document(s) prior to the expiration of the temporary permit. The temporary permit shall be for one time only and may not be renewed or re-issued.

(i) The minor employee's registration card shall be in the employee's possession or be readily available on the premises for inspection at all times while the minor is on duty.

(j) The director may accept application for "registration of minors for entertainment" of any person under eighteen years of age performing with a religious, charitable, or not-for-profit organization to entertain on a licensed premises submitted by the licensee on a DLC/PMT-6 form. The licensee shall comply with all conditions set forth by the commission, which shall include, but not be limited to:

- (1) Proof of the religious, charitable, or not-for-profit status of the organization. The religious, charitable, or not-for-profit organization shall attach a copy of its U.S. Internal Revenue section 501(c)(3) approval letter to the application;
- (2) Registration shall expire on June 30, each year, and may be renewed each July 1;
- (3) Minor's name, date of birth, and age;
- (4) Name of chaperone.

For this section, religious, charitable, or not-for-profit organization means a legal registered entity under federal and state law, organized and operated exclusively for religious, charitable, or not-for-profit purposes, no part of the net earning of which inure to the benefit of any private shareholder or individual.

§08-101-74 Requirement for registration of employees or as an employee approved by the director.

(a) Persons who apply to the commission for registration or as an employee approved by the director shall present:

- (1) Valid positive unexpired identification in the form of a passport with photograph, a laminated state driver's license with photograph, or other laminated government identification with photograph. School identification cards, city or county identification cards, or identification cards issued for the purpose of check cashing or other identification cards not issued by a government agency shall be unacceptable;
- (2) The department may reject any identification presented or require a second valid identification for verification;
- (3) Proof of a social security number;

- (4) The completed department's registration form as prescribed by the commission.

(b) All licensees shall submit to the department, on a date and in such manner as the director may direct, the name of every person currently employed on the licensed premises who is registered with the department or who is subject to registration. This shall not constitute a registration of any employee and the licensee must register all employees on the prescribed form and proper manner stated in the rules of the commission. The employment of a person who had previously registered for a particular premises and whose name does not appear on the licensee's list of employees shall be considered terminated and the registration of that person shall be voided. It shall be prima facie evidence of a violation of sections 08-101-71 or 08-101-73 of the rules of the commission, when an unregistered employee's name appears on any employee time card, employment record, or the annual registration update.

(c) The department may, for good cause, refuse to register a licensee or employee or refuse to allow a licensee or employee to take the certification examination or may suspend or revoke a certification or registration which has been issued.

§08-101-75 (Reserved)

§08-101-76 Registration certificate.

(a) All persons that are required to register with the department including, but not limited to, minors, employees approved by the director, and employees of class 5, category D, shall be required to be photographed and issued a certificate of registration which shall be valid until the expiration date indicated thereon, or when recalled, suspended, or revoked by the commission. A fee shall be charged for each certificate of registration to cover cost of material and processing.

(b) Licensee shall ensure that the certificate is readily available for inspection and in the employee's possession or be readily available on the premises for inspection at all times while on duty.

§08-101-77 Certification certificate for
"employee approved by the director", counties.

Any person holding a valid certificate for "employee approved by the director" or its equivalent issued by any department or commission within the State may exchange such certificate for a valid department certificate subject to verification, an expiration date set forth by the director, submission of proper documents, and any related fees.

§§08-101-78 to 79 (Reserved)

SUBCHAPTER 8

MANAGERIAL REQUIREMENTS

\$08-101-80	Conduct of employees
\$08-101-81	Approved employee designated to maintain order
\$08-101-82	Rules available at all times
\$08-101-83	Knowledge of rules presumed
\$08-101-84	Preparation of drinks; clearing of tables
\$08-101-85	Liquor dispensing system
\$08-101-86	Price list posted
\$08-101-87 to 89	(Reserved)

\$08-101-80 Conduct of employees.

(a) The licensee of any premises licensed to sell and serve liquor for consumption thereon, shall exercise due care to ensure that no person or employee:

- (1) Actively engaged in the sale or serving of liquor, or while on duty, be permitted to consume any alcoholic beverages, dance, entertain, or to sit with the patrons, except as otherwise provided in section 08-101-22(f)(2)(D) of the rules of the commission. The violation of this rule by such person shall be deemed to have been committed by the licensee and he shall be liable for such violation;
- (2) Encourage or permit any person on the licensed premises to touch, caress, or fondle the breast, buttocks, anus, or genitals of any other person, whether directly or through the clothing or any other material.

(b) At no time under any circumstances shall any licensee or its employee:

- (1) Permit any employee that is disorderly to be or remain in or on the licensed premises;

- (2) Fail immediately to prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any employee on the premises;
- (3) Hinder, obstruct, interfere, threaten, oppose, or molest any investigator or officer, or any person called by the investigator or officer to the investigator's or officer's aid, in the performance of the officer's or investigator's duty;
- (4) Solicit or accept any food or beverage, alcoholic or otherwise, as a gift from or at the expense of a customer, while on duty.

§08-101-81 Approved employee designated to maintain order.

(a) An on-duty "employee approved by the director", other than a bartender, capable of maintaining order shall be present in any licensed premises whenever public dancing and/or live entertainment is conducted therein.

(b) On a class 12, hotel licensed premises, an on-duty "employee approved by the director", other than a bartender, capable of maintaining order shall be present in any liquor dispensing area at all times whenever public dancing and/or live entertainment is conducted therein.

§08-101-82 Rules available at all times.

Every licensee shall have a copy of the current rules of the commission available at all times on the licensed premises for examination by employees and customers.

§08-101-83 Knowledge of rules presumed.

Every licensee shall be presumed to know the rules of the commission and shall ensure that its employees know the rules of the commission.

§08-101-84 Preparation of drinks; clearing of tables.

(a) On the premises licensed for the sale and consumption of liquor thereon, liquor service to a customer shall be made by the licensee or an employee of the licensee.

(b) No more than two drinks of any liquor at one time to an individual shall be permitted; provided however, distilled spirits may be served in container(s) up to one quart in capacity for any special occasion upon obtaining a special permit therefor from the director. Beer or wine may be served in a container, not to exceed the U.S. liquid measurement of one quart (.946 liter) to two or more persons.

(c) Any drink consisting of one kind of liquor and a mixer or water without other ingredients, which is prepared, served, sold, or offered for sale by any licensee upon whose premises liquor is permitted to be sold or consumed, shall contain not less than one fluid ounce of liquor, when said liquor is poured into the service glass by the licensee or any employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the mixer or water has not been added. A measuring device which measures not less than one fluid ounce shall be utilized at all times in the preparation of any drink consisting of any liquor. The foregoing requirement shall not apply to a drink served in a jigger as a straight drink with or without a chaser. Any straight drink shall be served in a jigger of not less than one fluid ounce capacity.

(1) Any drink consisting of one kind of liquor and a mixer or water without other ingredients, which is prepared, served, sold, or offered for sale by any licensee upon whose premises liquor is permitted to be sold or consumed, may contain not less than one-half fluid ounce of liquor, when the following apply:

(A) The patron requests a drink that contains less than one fluid ounce of liquor and is informed at the time of service that the drink does contain less than one

fluid ounce of liquor and the fraction of ounce of liquor that the drink contains;
or

(B) When all of the following apply:

- (i) The licensee lists all alcoholic beverages that contains less than one fluid ounce of liquor, which shall at all times be conspicuously posted and exposed to view of patrons within the interior of the licensed premises authorized to sell liquor for consumption on the premises. The listing shall clearly state the fraction of ounce of liquor each drink contains. For the purpose of this rule, either legible posters, signs, menus, or table tents are acceptable;
- (ii) The patron requests a drink that contains less than one fluid ounce of liquor;
- (iii) The licensee or employee must inform the patron at the time of ordering and time of service that the drink contains less than one fluid ounce of liquor and the fraction of ounce of liquor that the drink contains.

(d) If the portion of the licensed premises open to customers is equipped with a bar, the preparation of all drinks shall be on the top surface of the bar in such manner as to permit any interested customer or customers to have a clear and unobstructed view of the bartender's operations.

(e) All empty glasses and containers shall be removed by the persons serving the customers at the time of or before serving another drink. Any and all containers of liquor including, but not limited to, glasses, cups, or open bottles, shall be removed from all areas of the licensed premises which are open to the

public no later than the legal closing time for liquor sales.

(f) All mixed alcoholic drinks shall be freshly made for immediate consumption. Pre-mixed drinks may be utilized by obtaining a permit, pursuant to subsection (b), or an approval letter from the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, or both, and filing such document(s) with this department.

§08-101-85 Liquor dispensing system.

(a) Draught beer sold or served shall be freshly drawn. The sale or service of stale beer, or both, is strictly prohibited. Distilled spirits, beer and wine taps shall be cleaned daily. Licensee shall be responsible to clean and sanitize the interior and exterior of tri-tap valve(s), valve(s), lines, coils, and faucets at least every twenty-one days.

(b) Each licensee selling malt beer, distilled spirits, or wine on draught or through a dispensing system for consumption on premises shall display a sign on, over, or near each tap or faucet showing the trademark, brand, or name of the alcoholic liquor. This sign must be visible for a distance of at least ten feet by a person with normal or corrected vision.

(c) No licensee shall substitute any other brand of malt beverages, distilled spirits, or wine in place of the brand designated by such visible sign, and the licensee shall be prepared at all times to serve any malt beverages, distilled spirits, or wine that are advertised by such sign, or signs upon the premises.

§08-101-86 Price list posted.

(a) Current prices of alcoholic beverages shall be at all times posted and exposed to view of patrons within the interior of a licensed premises authorized to sell liquor for consumption on the premises.

(b) All class 5, category D licensees shall post all beverage prices, alcoholic or non-alcoholic, and any other price for services or commodities that may be charged to the patrons.

(c) For the purpose of this section, there shall be a clear and legible sign, menu, table tent, placard, or marker which shall be in the English language, situated in a conspicuous location and clearly legible from the distance of where any patron is situated.

§§08-101-87 to 89 (Reserved)

SUBCHAPTER 9

REGULATION OF PREMISES

\$08-101-90	Entrances, aisles, or walkways
\$08-101-91	Partitions
\$08-101-92	Lighting
\$08-101-93	Posters, signs, displays, and advertisements
\$08-101-94	Sanitation
\$08-101-95	Interior rooms
\$08-101-96	Unauthorized access
\$08-101-97	Exclusive control
\$08-101-98	Modification or extension of licensed premises
\$08-101-99	(Reserved)

\$08-101-90 Entrances, aisles, or walkways.

(a) In any premises licensed to sell and serve liquor for consumption thereon, while open for business, main or primary entrances and street entrance doorways to the premises must be kept unlocked and entrances to booths must be open and unobstructed.

(b) Licensee shall ensure at all times that entrances to restrooms, aisles, or walkways within the premises are cleared of any congestion or blockage which would prevent any person entry to or exit from the restrooms, from moving freely within any aisle or walkway, or entry to or exit from the premises.

\$08-101-91 Partitions.

Partitions between booths shall be not more than fifty-four inches in height measured from the floor.

\$08-101-92 Lighting.

The interior lighting shall be sufficient to make easily discernible the appearance and conduct of all persons and patrons in that portion of the premises where liquor is sold, served, delivered, or consumed and the exterior of the licensed premises shall be well and properly lighted.

§08-101-93 Posters, signs, displays, and advertisements.

Any poster or sign maintained on the exterior of a licensed premises shall conform with the sign ordinances of the County and its amendments as it pertains to the district in which the premises is located.

§08-101-94 Sanitation.

(a) All licensed premises, authorized to sell and serve liquor for consumption on premises, shall contain separate and adequate toilet facilities for males and females, provided the commission may approve the use of toilet facilities located outside the licensed premises if located within a reasonable distance from the licensed premises. Approval of use of toilet facilities located outside of the licensed premises shall be subject to the applicant or licensee obtaining the necessary clearances from the State, department of health, and other governmental agencies.

(b) Toilet facilities for males and females shall be available for use at all times during the hours the licensed premises is open for business and be kept in a clean and sanitary condition.

§08-101-95 Interior rooms.

(a) All interior rooms or enclosed areas in licensed premises authorized to sell and serve liquor for consumption on their premises shall be constructed in such a manner as to permit a full view of the interior of the room through a transparent window on the entry door and/or on the wall. Tinting of windows is prohibited.

(b) The commission may waive this requirement for good cause for a class 12 licensee. A request for a waiver shall be in writing and specifically state why an exception to this rule is justified.

§08-101-96 Unauthorized access.

The premises shall not be connected to or have access to any other business or area except as authorized by the commission.

§08-101-97 Exclusive control.

(a) Licensee must have and maintain exclusive control of the premises and shall be subject to all State laws and rules of the commission at all times. Licensee must conduct, maintain and operate all its business including the payment of all taxes and all related monies due under the license issued.

(b) All licensed premises shall be considered open for business whenever there is a private party, business meeting, or its like.

(c) Licensee may not discriminate or exclude anyone due to race, gender, or any other discriminating classification.

§08-101-98 Modification or extension of licensed premises.

(a) Modification to the licensed premises other than what was submitted to the commission at the time of application is strictly prohibited.

(b) Extension of premises shall not be granted unless such area requested is adjacent to and connected to the licensed premises and meet all governmental requirements.

§08-101-99 (Reserved)

SUBCHAPTER 10

MISCELLANEOUS

\$08-101-100	Deliveries by manufacturers, wholesalers, retailers; peddling prohibited; exception
\$08-101-101	Sale of alcohol for non-beverage purposes
\$08-101-102	Minor decoy; requirements
\$08-101-103	Assessment of penalty; hearing
\$08-101-104	Mandatory penalties
\$08-101-105	Disposal of liquor
\$08-101-106	Manufacturer, brewpub, and wholesale dealers' licensees; special restrictions
\$08-101-107	Manufacturer or wholesaler; special license exception
\$08-101-108	Retailer's independence at risk
\$08-101-109	Consumer promotions
\$08-101-110	Merchandise
\$08-101-111	Violation
\$08-101-112	Pool buying
\$08-101-113	Outdated product
\$08-101-114	Trade shows and/or other exhibitions
\$08-101-115 to 149	(Reserved)
\$08-101-150	Severability

\$08-101-100 Deliveries by manufacturers, wholesalers, retailers; peddling prohibited; exception.

(a) Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing any liquor from a licensed premises for delivery to a customer under the manufacturer's or wholesaler's and/or retail dealer's license, the licensee must have in hand in his office, store, or warehouse, a bona fide order therefor. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefor, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquors at retail in their original packages or dispense liquor for consumption on the premises.

(b) A manufacturer or wholesaler licensee shall deliver any liquor ordered or purchased by a retailer into the retailer's premises. Delivery of any liquor to any other location except the retailer's licensed premises is strictly prohibited. Provided, however, any retailer or its duly authorized employee may pick up any order of liquor directly from the wholesaler's or manufacturer's licensed premises, and such liquor must come to rest within the retailer's premises prior to any sale.

§08-101-101 Sale of alcohol for non-beverage purposes.

Alcohol may be sold for non-beverage purposes, upon the prescription of a duly licensed physician, by a person holding a retail alcohol license. Such sale shall be in a maximum quantity of one quart at any one time, and the alcohol must be in a standard original package. Each such prescription shall be preserved by the seller who shall further keep a permanent record of every such sale, including the name of the prescribing physician and of the person to whom such alcohol was sold and delivered and the quantity so sold and delivered.

§08-101-102 Minor decoy; requirements.

(a) The department and any law enforcement agency may use a person under the age of twenty-one years of age to attempt to purchase alcoholic beverages and to apprehend licensees, who sell alcoholic beverages to minors.

(b) The following minimum standards shall apply to actions filed against any licensee, who has allegedly sold liquor to a minor under this covert operation.

- (1) At the time of the covert operation, the decoy shall be younger than twenty-one years of age;
- (2) The decoy shall display the appearance which could generally be expected of a person under twenty-one years of age, at the time of the alleged offense;

- (3) A decoy shall either carry his or her own identification showing the decoy's correct date of birth or shall carry no identification; a decoy who carries identification shall present it upon request to any seller of alcoholic beverages;
- (4) A decoy shall answer truthfully any questions about his or her age;
- (5) Following any completed sale, the liquor control officer or any law enforcement officer directing the decoy shall make a reasonable attempt to enter the licensed premises to have the minor decoy, who purchased alcoholic beverages, make a face-to-face identification of the alleged seller of the alcoholic beverages.

(c) Any licensee who sells to a decoy shall be prosecuted under section 08-101-60(b)(1)(A) of the rules of the commission, section 281-78(b)(1)(A), HRS, or any other related rules or laws governing the sale, service, possession, or consumption of liquor by a minor.

§08-101-103 Assessment of penalty; hearing.

(a) The commission or board may revoke any license at any time issued, or suspend the right of the licensee to use the licensee's license, or assess and collect a penalty, or reprimand the licensee, either for the violation of any condition of the license, or of any provisions of chapter 281, HRS, or of any rule of the commission, applicable thereto, or upon the conviction in a court of law of the licensee of any violation of chapter 281, HRS, or of any other law relative to the licensee's license or the proper exercise thereof, or of any violation of law in any other respect on account whereof the commission may deem the licensee to be an unfit or improper person to hold a license, or for any other cause deemed sufficient by the commission.

(b) In every case where it is proposed to revoke or suspend the exercise of any license or assess and collect a penalty for any cause other than a conviction at law of the licensee as above specified, the licensee shall be

entitled to notice and hearing in conformity with chapter 91, HRS, the notice to be given at least five calendar days before the hearing, except that any special license shall be subject to summary revocation for any violation of or evidence of intent to violate the proper exercise thereof, without hearing before the commission or board.

(c) At the hearing, before final action is taken by the commission or board, the licensee shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to the licensee upon the licensee's request and at the licensee's expense.

(d) Any order of revocation, suspension, fine, or reprimand imposed by the commission or board upon the licensee shall be in addition to any penalty that might be imposed upon the licensee upon the licensee's conviction at law for any violation of chapter 281, HRS. No licensee shall be subject to both the penalty assessed and collected by the commission or board, and to revocation or suspension of license. The amount of penalty assessed and collected by the commission or board from any licensee for any particular offense shall not exceed the sum of \$2,000.

§08-101-104 Mandatory penalties.

(a) Excessive service. If the licensee has been convicted of committing the offense defined in section 281-78(b)(1)(B), HRS; or section 08-101-60(b)(1)(B) of the rules of the commission, the licensee shall be sentenced as follows:

- (1) If the licensee has not been convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the sentence

shall be a fine of not less than \$1,000, but not more than \$2,000.

- (2) If the licensee has been once convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the sentence shall either be a fine of not less than \$2,000 or suspension of the license, not to exceed thirty days.
- (3) If the licensee has been twice convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the sentence shall either be a suspension of the license, not to exceed thirty days, or revocation of the license.
- (4) If the licensee has been thrice convicted of committing the offense in section 281-78(b)(1)(B), HRS, or section 08-101-60(b)(1)(B) of the rules of the commission during the previous five years, the sentence shall be a revocation of the license.

(b) Minors. If the licensee has been convicted of committing the offense defined in section 281-78(b)(1)(A), HRS, or section 08-101-60(b)(1)(A) of the rules of the commission, the licensee shall be sentenced as follows:

- (1) If the licensee has not been convicted of committing the offense in section 281-78(b)(1)(A), HRS, or section 08-101-60(b)(1)(A) of the rules of the commission during the previous five years, the sentence shall be a fine of not less than \$1,000 but not more than \$2,000.
- (2) If the licensee has been once convicted of committing the offense in section 281-78(b)(1)(A), HRS, or section 08-101-60(b)(1)(A) of the rules of the commission

during the previous five years, the sentence shall either be a fine of not less than \$2,000 or suspension of the license, not to exceed thirty days.

- (3) If the licensee has been twice convicted of committing the offense in section 281-78(b)(1)(A), HRS, or section 08-101-60(b)(1)(A) of the rules of the commission during the previous five years, the sentence shall either be a suspension of the license, not to exceed thirty days, or revocation of the license.
- (4) If the licensee has been thrice convicted of committing the offense in section 281-78(b)(1)(A), HRS, or section 08-101-60(b)(1)(A) of the rules of the commission during the previous five years, the sentence shall be a revocation of the license.

(c) The commission or board may impose penalties greater than those prescribed by the mandatory penalties of this section, providing the commission or board finds that the licensee wilfully or intentionally violated sections 281-78(b)(1)(B) or 281-78(b)(1)(A), HRS, or sections 08-101-60(b)(1)(B) or 08-101-60(b)(1)(A) of the rules of the commission.

(d) Convictions before March 1, 1997, shall not be considered in issuing mandatory penalties under this section.

§08-101-105 Disposal of liquor.

(a) Any licensee may sell any liquor for off-premises consumption, provided such liquor is first offered to the wholesaler authorized to sell such liquor. In the event the wholesaler declines the offer, a written application may be made to the department for approval to sell the liquor as a closeout item. The request shall include a description of the liquor in sufficient detail as to distinguish it from all other liquors, the size of containers, type, brand, number of cases or bottles of each size, and any information that may be required by the department.

(b) A licensee, who discontinues to offer any brand of liquor by closeout, shall not purchase, sell, or offer for sale any brand or items of the closeout liquor for a period of twelve months after the date of return of such liquor or the sale of the last container of such liquor. Wines bearing labels of the same brand, but of different types, such as port, sherry, or zinfandel, or of different vintage years, shall be considered different items provided that such types or vintage years appear on the labels affixed to the containers of such wines.

(c) Any licensee may be granted permission, upon application, to utilize any liquor for personal use or the destruction of any liquor that any wholesaler or manufacturer, authorized to sell such liquor, refuse to accept the return of such liquor for credit, or which cannot be sold.

(d) In the case of a liquor license transfer, the transferor may be granted permission, upon application to the director, to sell or transfer any remaining liquor to the transferee that any wholesale dealer or manufacturer refuses to accept the return of for credit.

§08-101-106 Manufacturer, brewpub, and wholesale dealers' licensees; special restrictions.

The control of alcoholic beverages in the County has been established by the commission, as a "three-tier system." The three tiers of this system are designated as manufacturer, wholesaler, and retailer. Each of these three tiers shall operate separately and apart from each other for the purpose of control. In order for this control to be effectively administered, it is necessary to prevent any type of direct interlocking interest by and between the three separate levels.

(a) It shall be unlawful for any person holding a manufacturers' license or a wholesale dealers' license, within or without the County, or any person acting as an agent or representative for any manufacturer or wholesale dealer licensee, within or without the County, directly or indirectly, or through any subsidiary or affiliate, to:

- (1) Acquire or hold any interest in any license of a retailer;
- (2) Acquire any interest in the real or personal property owned, occupied, or used by a retailer in the conduct of its business, unless the holding of such interest is permitted under the rules of the commission.
- (3) Furnish, give, rent, lend, or sell to any licensee any equipment, fixtures, signs, supplies, money, services or anything of value, subject to the exceptions contained in this section. Any service or anything of value as provided by the exceptions contained in this section, shall be offered to all retailers on the same terms without business reasons present to justify the difference in treatment.
- (4) Deliver, traffic in, ship or cause to be shipped, any liquor to any person who is not a liquor licensee within the County for display, sampling, or tasting on a not-for-sale basis, who:
 - (A) Is not permitted or authorized to receive such shipments of liquor, pursuant to chapter 281, HRS, or the rules of the commission; and
 - (B) Who has not applied for and received approval from the commission or its director to receive such shipment of liquor.

Liquor shipped into the County under this subsection shall be in 750 milliliter-sized containers, be appropriately marked "Sample - Not For Resale," and shall come to rest at the warehouse of a holder of a class 3, wholesale dealers' licensee, within the County, and be held in the licensed premises for at least forty-eight hours before delivery to or picked up by the person who was issued a permit to receive such liquor.

(b) It shall be unlawful for any person holding a brewpub license from within or without the County, to:

- (1) Acquire or hold any interest in any license of a class 3, wholesale dealers' license, or a class 2 or class 4 through 13 license;
- (2) Acquire any interest in the real or personal property owned, occupied, or used by a class 3, wholesale dealers' license, or a class 2 or class 4 through 13 license in the conduct of its business, unless the holding of such interest is permitted under the rules of the commission or statement thereof has been filed with and approved by the commission.

(c) Non-beer manufacturer licensee. Section 08-101-22(b)(4) of the rules of the commission shall not apply to the holder of a non-beer manufacturer license under the rules of the commission, chapter 281, HRS, under the law of another jurisdiction, or from within or without the County, from maintaining an indirect interest in the license or licensed premises of a wholesale dealer licensee. The holder of any non-beer manufacturer license, from within and without the State, is prohibited from having a direct ownership of a wholesale dealers' license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the wholesale dealers' license; or having any interlocking officers or directors in the corporation, managers or members in any limited liability company, partner in a partnership, or its like, in the establishment, maintenance, or operations in the business of any wholesaler; except as may be provided in the rules of the commission, or in section 281-97, HRS; or

(d) Beer manufacturer licensee. Section 08-101-22(b)(4) of the rules of the commission shall not apply to the holder of a beer manufacturer license under the rules of the commission, chapter 281, HRS, under the law of another jurisdiction, or from within or without the County, from maintaining an indirect interest in the license or licensed premises of a beer and wine wholesale dealers' licensee. Any beer manufacturer from within and without the State is restricted to maintaining an indirect interest in the license or licensed premises of

a beer and wine wholesale dealer, who shall be limited to wholesale distribution of beer. The holder of any beer manufacturer license, from within and without the State, is prohibited from having a direct ownership of a wholesale dealers' license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the wholesale dealers' license; or having any interlocking officers or directors in the corporation, managers or members in any limited liability company, partner in a partnership, or its like, in the establishment, maintenance, or operations in the business of any wholesaler; except as may be provided in the rules of the commission, or in section 281-97, HRS; or

(e) No manufacturer or wholesaler, within or without the County, shall have any financial interest, directly or indirectly, by stock ownership, or through interlocking partners, officers, directors, or any person owning outstanding stock in the corporation, any member or manager of a limited liability company, partner in a partnership or its subdivision thereof, or otherwise in the establishment, maintenance, or operation in the business of any retail licensee, except as may be provided in section 281-97, HRS, or this section. No manufacturer or wholesaler, within or without the County, shall acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, any interest in the premises of a retailer.

(f) No employee of an industry member from within or without the State, shall be employed by a retailer in any managerial capacity or in a position where such employee, directly or indirectly, place orders for, orders, or purchase any liquor from any industry member, or representative or solicitor of an industry member.

(g) No industry member, within or without the County, shall:

- (1) Directly or indirectly pay or credit any retailer for using or distributing point of sale advertising materials or consumer advertising specialties.

- (2) Require a retailer to take and dispose of any quota of distilled spirits, wine, or malt beverages.
- (3) Sell, offer to sell, or contract to sell to any retailer or for any such retailer to purchase, offer to purchase, or contract to purchase any liquor product that have any back end discounts on liquor products sold. All discounts shall be given or credited directly to the licensee's account at the time of the initial purchase. Back end discount shall mean any discount given after the time of the initial purchase of the liquor product by the retailer or any discount offered or given contingent on the amount of liquor sold.
- (4) Sell, offer to sell, or contract to sell to any retailer, or for any such retailer to purchase, offer to purchase, or contract to purchase any liquor products on consignment; or under conditional sale; or with the privilege of return; or on any basis other than a bona fide sale, except as provided in this section.
- (5) Rearrange or reset of all or part of a retail dealers' licensee's store or department.
- (6) Block access in a retailer's premises to other manufacturer's or wholesaler's product.
- (7) Subsection (g) applies only to transactions between industry members and retailers. It does not apply to transaction between industry members, for example, manufacturer and a wholesaler.
- (8) Furnish, give, rent, lend, or sell, directly or indirectly, equipment, fixtures, signs, supplies, money, services, or other things of value by an industry member to a third party, where the benefits resulting from such things of value flow to individual retailers, and such act(s) is considered furnishing of things of value within the meaning of the rules of

the commission. Furnishing of a thing of value includes, but is not limited to, making payments or furnishing any thing of value for advertising to a retailer association, any media company, a display company, or any person where the resulting benefits flow to individual retailers, or the industry member's payment or furnishing any thing of value to a third party, where the thing of value benefits an individual retailer.

- (9) Directly or indirectly, furnish or pay for any advertising for, or with respect to, any one or more retailer by means of radio, television, magazine, or any type of media advertising, or pay for any media announcements of any on-site product sales promotion.
- (10) Deliver or ship to any licensee any liquor product that was not ordered by the licensee. Upon receiving notification by the licensee of receiving liquor product not ordered, the industry member shall, within five calendar days, retrieve the liquor products, return monies to, credit, or adjust the billing of the licensee for products delivered that were not ordered. Industry member shall not assess any cost for shipping, handling, restocking or its like to any licensee for any products delivered that were not ordered. Industry member shall be responsible for any cost, including, but not limited to, shipping, handling, transportation, labor or its like which the retailer may incur to return any product delivered that was not ordered. Any product that was delivered and not ordered by the licensee which has not been retrieved by the wholesale dealers' licensee or the manufacturers' licensee within five calendar days from the date of notification by the retailer, shall become the property of the retailer without cost.

may: (h) Manufacturers' or wholesale dealers' licensee,

- (1) Furnish or give a sample of distilled spirits, wine or malt beverages to a retailer who has not purchased the brand from that industry member within the last twelve months. Industry member may give a sample of not more than three gallons of malt beverage, not more than three liters of any brand of wine, and not more than three liters of distilled spirits, which shall be invoiced and clearly marked "sample" on each container.
- (2) Conduct tasting and sampling activities at a licensed premises authorized for on-premises consumption. Industry member must purchase the products used from the licensee, but may not purchase them from the licensee for more than the ordinary retail price. Industry members may conduct tasting and sampling activities upon its licensed premises for the introduction of new products upon obtaining a permit from the director.
- (3) Give or sponsor educational seminars for employees of retailers either at the wholesaler's or manufacturer's premises or at the retailer's premises. Examples would be seminars dealing with the use of a retailer's equipment, training seminars for employees of retailers, or tours of wholesaler's or manufacturer's premises. This section does not authorize the wholesaler or manufacturer to pay a retailer's or its employee's expense in conjunction with an educational seminar such as travel and lodging, nor does it allow the consumption of liquor by any on-duty employee. This does not preclude providing nominal hospitality during the event.
- (4) Give or sell point of sale advertising specialties to a retailer if these items bear advertising matter and are primarily valuable to the retailer as point of sale advertisement. These items include such

things as posters, placards, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, backbar mats, thermometers, clocks, t-shirts, hats, and calendars. An industry member may add the name or name and address of the retailer to the advertising specialty.

- (A) The total value of all advertising specialties furnished by an industry member to a retailer may not exceed \$300 per brand in any one calendar year per licensed premises. The value of the advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded;
 - (B) Industry members may not pool or combine their dollar limitation in order to provide a retailer with retail advertising specialties valued in excess of \$300 per brand;
 - (C) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;
 - (D) Industry members and retailers are required to keep and maintain records on the licensed premises for a three-year period of all items furnished to retailers.
- (5) Accept the return of any liquor product from a retailer for "ordinary and usual commercial reasons" after the product has been purchased, so long as the product meets the following conditions and limitations for such returns:
- (A) Defective products which are unmarketable due to product deterioration, leaking

containers, damaged labels, or mutilated and missing strip stamps;

- (B) Error in products delivered where there is a discrepancy between products ordered and delivered may be corrected within a reasonable period of time of not more than five calendar days;
- (C) Products which may no longer be lawfully sold due to a change in law or regulation, a particular size or brand is no longer permitted to be sold; or there is a change in the formula, proof, label or container of the product, or where the industry member has discontinued the production or importation of a product; or
- (D) Termination of business where the licensee may return products on hand at the time the licensee terminates the operation of the business.

An industry member is under no obligation nor required to accept the return of products for the reasons listed.

- (6) Give or sell product displays to a retailer, subject to the following limitations:
 - (A) The total value of all product displays furnished by an industry member under this section may not exceed \$300 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it with transportation and installation costs excluded;
 - (B) Product display means any wine racks, bins, barrels, casks, shelving and the like from which distilled spirits, wine, or malt beverages are displayed on and sold;

- (C) Industry member may not pool or combine their dollar limitations in order to provide a retailer a product display in excess of \$300 per brand;
 - (D) Product display shall bear conspicuous and substantial advertising matter;
 - (E) Industry member may assist a retailer in setting a product display in a retail premises.
- (7) Give or sell outside signs to a retailer, providing:
- (A) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;
 - (B) The retailer is not compensated, directly or indirectly, such as through a sign company, for displaying the signs; and
 - (C) The cost of the signs may not exceed \$400.
- (8) Provide a recommended shelf plan or shelf schematic for distilled spirits, wine, or malt beverages.
- (i) Manufacturers' or wholesale dealers' licensee shall, at all liquor establishments, stock, rotate, and affix the prices to distilled spirits, wine, or malt beverages which they sell, and check for outdated or spoiled liquor products, at least once a month and at the time of delivery of any liquor product, unless the retailer requests in writing that this service not be provided or be discontinued.

§08-101-107 Manufacturer or wholesaler; special license exception.

The rules of the commission do not prohibit any manufacturer or wholesaler licensee from giving financial

or other forms of event sponsorship assistance to any charitable or educational nonprofit organization which are issued a class 10, special license, by this department for purposes of charitable fundraising. This section does not prohibit such suppliers from advertising their sponsorship at such special events.

§08-101-108 Retailer's independence at risk.

Industry members are prohibited from placing retailer independence at risk. The criteria specified in this section are indications that a particular practice places retailer independence at risk. A practice need not meet all of the criteria specified in this section in order to place licensee independence at risk.

- (1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.
- (2) The industry member obligates the retailer to participate in the promotion to obtain the industry member's product.
- (3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.
- (4) The retailer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.
- (5) The practice involves the industry member in the day-to-day operations of the retailer. For example, the industry member controls the retailer's decisions on which brand of products to purchase or the manner in which the products will be displayed on the retailer's premises.

- (6) The practice is discriminatory in that it is not offered to all retailers within the County the same terms without business reasons present to justify the difference in treatment.

§08-101-109 Consumer promotions.

(a) Coupons. An industry member may furnish to consumers, coupons which are redeemable at a retail licensee premises under the following conditions:

- (1) The coupons may not specify a particular retailer or group of retailers where such coupons can be redeemed.
- (2) An industry member may reimburse a retail licensee for the face value of all coupons redeemed and pay a retailer the usual and customary handling fee for the redemption of coupons.
- (3) Payments for the redemption of coupons shall be made directly to the retail licensee to reduce the cost of sales. An industry member may not pay officers, employees, or representatives of the retailer or wholesaler for the redemption of coupons.

(b) Direct offering. Contest prizes, premium offers, refunds, and like items may be offered by industry members or retailers directly to consumers under the following conditions:

- (1) Officers, partners, employees and representatives of wholesalers or retailers are excluded from participation.
- (2) The following requirements for participation of any direct offering are prohibited:
 - (A) The requirement of proof of purchase of any liquor products;

- (B) The public is required to purchase a liquor product to participate or purchase a liquor product to obtain the entry form for participation, unless the entry form with the instructions on how to enter is made available without the necessity of a consumer making a purchase of any liquor product within the licensed premises. The use of hang tag coupon or entry form that is attached to, or part of the liquor product or the container containing the liquor product is strictly prohibited;
- (C) The failure of an industry member and the retailer to have entry forms and instructions on how to enter conspicuously posted and readily available to the public at all times within licensed premises;
- (D) Any requirement which contains discriminatory clauses which prevent any member of the public from participating;
- (E) Any requirement that may be in violation of any Federal, State, or County laws, codes, ordinances, or rules.

§08-101-110 Merchandise.

An industry member, who is also engaged in business as a bona fide vendor of other than liquor merchandise, may sell that merchandise, such as glassware, tapping accessories, supplies, etc., to a retailer for the licensee's use if:

- (1) The merchandise is sold at its fair market value, but not less than the cost to the industry member who initially purchased them;
- (2) The merchandise is not sold in combination with distilled spirits, wines, or malt beverages;

- (3) The merchandise is itemized separately on the industry member's invoices and other records;
- (4) The price of the merchandise is collected from the licensee within thirty days of the date of sale; and
- (5) An industry member may rent to a holder of a class 10, special license, draft keg dispensing van, draft keg dispensing trailer, draft keg dispensing wagon, beer taps, jockey box, cold pack, and/or tapping accessories provided:
 - (A) That the equipment is itemized separately on the industry member's invoices and other records;
 - (B) That the equipment is rented at fair market value but not less than the cost to the industry member;
 - (C) Industry member or its employee may deliver the draft keg dispensing van, draft keg dispensing trailer, or draft keg dispensing wagon to the class 10 licensee's premises and may assist in the connection and maintenance of the draft kegs and its tapping accessories but may not assist the class 10 licensee in the selling, serving, or furnishing of liquor to patrons.

§08-101-111 Violation.

Any violation of any liquor laws or rules of the commission by any industry member shall be considered committed by the licensee authorized to import the product into the County.

§08-101-112 Pool buying.

(a) Any class 3, wholesale dealers' licensee, who is a liquor licensee in other counties within the State, may participate in pool buying of liquor products pursuant to any pool buying agreement between the same

licensee from different counties, which has been filed with and approved by the commission; provided that:

- (1) The pool buying agreement is in writing and designates one of the licensees as the agent of the others for the purpose of pool buying;
- (2) Any order for pool buying from the holder of a manufacturer's license shall be placed by the agent and payment for that order shall be made by the agent;
- (3) Each pool buying order shall contain an inventory and cost of the liquor products purchased by each liquor license number of the different counties;
- (4) The holder of a manufacturer's license in selling to the agent shall follow invoice, record keeping, and delivery procedures which are in compliance with this chapter and the rules of the commission of each county having jurisdiction over the seller;
- (5) Licensee of the pool buying agreement shall maintain invoices and any records of the liquor products purchased pursuant to the pool buying agreement within the licensed premises for a period of four years and shall be made available forthwith for inspection by the department or its authorized personnel; and
- (6) Each pool buying transaction shall be completed on the day transacted, and where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensees.

(b) As used in this section, "pool buying" means the same licensee holding liquor licenses from different counties sharing the cost of a single purchase of liquor.

(c) Nothing in this section shall be deemed to exempt any licensee entering into any pool buying agreement from any antitrust laws, liquor laws, or rules of the commission.

§08-101-113 Outdated product.

No retailer shall offer to sell or sell any product that has exceeded an industry member's expiration date that is affixed to its container nor shall any retailer possess or store any product fourteen days after the industry member's expiration date that is affixed to its container. Industry member may exchange the same product for product or credit the retailer for the expired product. Industry member is under no obligation nor required to accept the return of any product that has exceeded its expiration date.

§08-101-114 Trade shows and/or other exhibitions.

Any trade exhibitor, trade organization or other exhibitor shall apply for the issuance of a permit, without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to the following terms and conditions:

- (1) Liquor shipped into the County under this section shall be in 750 milliliter-sized containers, be appropriately marked "Sample - Not For Sale or Resale," and shall come to rest at the warehouse of a holder of a class 3, wholesale dealers' licensee, within the County, and be held in the licensed premises for at least forty-eight hours before delivery to or picked up by the person who was issued a permit to receive such liquor;
- (2) The applicant shall submit an inventory of all liquor shipped into the County at the time of the application, and a closing inventory of all liquor used during the event within five working days after the close of the event.

Any liquor not utilized at the event shall become the property of the department and it shall be the permit holder's responsibility to transport all liquor not utilized at the event to this department for disposal;

- (3) The applicant shall obtain and certify that all necessary clearances from other governmental agencies have been obtained for the event;
- (4) The applicant shall be subject to and shall comply with the rules of the commission, State liquor laws, and shall be subject to any penalties as provided by law;
- (5) Sample tasting shall be limited to one ounce per person per brand but not more than three ounces of liquor in total shall be provided to any person;
- (6) Liquor may be sampled on a complimentary basis only and at no time under any circumstances shall any holder of a permit or its employee, directly or indirectly, sell or be compensated for such sample;
- (7) At no time under any circumstances shall any holder of a permit or its employee sell, serve, or furnish any liquor to, or allow the consumption of any liquor by any person at the time under the influence of liquor, drugs, or any combination thereof, or to any person under twenty-one years of age;
- (8) Liquor shall be consumed on the approved area that the holder of the permit have exclusive control and clear view of, and any liquor shall not be removed from the area, except as may be approved by the director;
- (9) The director shall not approve any permit application unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws

and to inspection by investigators.
Application shall be submitted at least ten
working days prior to the event.

§§08-101-115 to 149 (Reserved)

§08-101-150 Severability.

If any provision of the rules of the commission or the application thereof is held invalid, such invalidity shall not affect other provisions or application of the rules of the commission which can be given effect without the invalid provision or application, and to this end, the provisions of the rules of the commission are declared to be severable."